UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: APPLE iPHONE 3G AND 3GS MMS MARKETING AND SALES PRACTICES LITIGATION	MDL NO. 2116
	2:09-md-2116
	SECTION: J
THIS DOCUMENT RELATES TO ALL CASES	JUDGE BARBIER
	MAGISTRATE JUDGE WILKINSON

POSITION PAPER OF AT&T MOBILITY LLC REGARDING THE EFFECT ON THIS LITIGATION OF THE U.S. SUPREME COURT'S DECISION IN *AT&T MOBILITY LLC V. CONCEPCION*

In *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), the Supreme Court held that courts may not refuse to enforce AT&T Mobility LLC's ("ATTM's") arbitration agreement on the ground that it precludes customers from pursuing a class action or class arbitration. As the Eleventh Circuit recently explained, "faithful adherence to *Concepcion* requires the rejection" of arguments that ATTM's arbitration agreement is unenforceable because "the class action waiver will be exculpatory." *Cruz v. Cingular Wireless, LLC*, No. 08-16080, __ F.3d __, 2011 WL 3505016, at *8 (11th Cir. Aug. 11, 2011). In light of *Concepcion*, there can be no doubt that this argument is foreclosed as a matter of law – and accordingly the burdensome arbitration-related discovery plaintiffs have sought likewise is impermissible.

Since *Concepcion*, a number of federal courts have enforced ATTM's arbitration agreement under the Federal Arbitration Act ("FAA"), compelling plaintiffs to resolve their disputes with ATTM in accordance with the terms of their agreements. In addition, many other plaintiffs whose putative class actions against ATTM had been stayed or deferred pending *Concepcion* voluntarily dismissed them after *Concepcion* was decided in ATTM's favor, signaling their recognition that any further attempt to evade their arbitration agreements would be futile.

In this case, plaintiffs' arbitration agreements are either the same as or materially equivalent to the arbitration agreement the Supreme Court upheld in *Concepcion*. As a result, plaintiffs should voluntarily dismiss their claims against ATTM and pursue any individual claims they believe they may have in accordance with their arbitration agreements.

If plaintiffs insist on attempting to maintain putative class actions in violation of their arbitration agreements and imposing improper discovery costs on ATTM, the Court should reject that effort and take account of the fundamentally changed landscape since ATTM filed its motions to compel arbitration over a year ago. Although it was necessary for ATTM's original arbitration motions to account for the laws of 12 states, the decision in *Concepcion* underscores that ATTM's arbitration agreement is now fully enforceable as a matter of federal law. Accordingly, the most efficient course would be for ATTM to file updated briefs relying on *Concepcion*. Plaintiffs appear to agree that this is appropriate. *See* Dkt. No. 196, at 1 ("Plaintiffs agree that ATTM should have a time period after the *Concepcion* decision to refile, amend or dismiss their Motions to Compel Arbitrations.").

As to whether plaintiffs may continue to seek arbitration-related discovery, ATTM's position is that, as many courts have held, there is no need for such discovery and, indeed, that the FAA forbids it. If plaintiffs disagree, ATTM proposes that the Court require plaintiffs to file

an opposition to ATTM's renewed arbitration motions that explains what discovery, if any, they believe is appropriate and permissible in light of *Concepcion*, and for ATTM to be permitted to file a reply. The Court can then decide whether plaintiffs have raised the types of legal or factual issues that entitle them to pursue arbitration-related discovery, despite the fact that *Concepcion* establishes that such discovery is neither necessary nor appropriate and that plaintiffs should be required to resolve their disputes with ATTM in accordance with their arbitration agreements.

BACKGROUND

This multidistrict litigation comprises 23 putative class actions brought by 28 plaintiffs against Apple Inc. ("Apple") and ATTM in 13 different states across the country.[1] On June 4, 2010, amended complaints were filed in 16 of these actions.[2] Dkt. Nos. 67-82. The amended complaints allege putative statewide classes, except for the amended complaints in *Sterker v. Apple Inc.*, No. 09-4242 (N.D. Cal.), which alleges a putative nationwide class against Apple and a putative statewide class against ATTM; and in *Goette v. Apple Inc.*, No. 4:09-CV-1480 (E.D. Mo.), which alleges a putative nationwide class against Apple and ATTM. The underlying complaints allege that Apple and ATTM misrepresented the availability of a single feature of the iPhone 3G and 3GS known as Multimedia Messaging Services ("MMS").

ATTM's customers – including the plaintiffs – receive wireless service from ATTM under wireless service agreements that require them to resolve their disputes with ATTM in arbitration on an individual basis. Accordingly, ATTM moved to compel arbitration of each

[1] Four of the actions have been voluntarily dismissed: *Pietrangelo v. Apple Inc.*, No. 09-cv-1992 (N.D. Ohio); *Kamarian v. Apple Inc.*, No. 09-cv-6590 (C.D. Cal.); *Williams v. Apple Inc.*, No. 09-6914 (C.D. Cal.); and *Gros v. Apple Inc.*, No. 09-cv-08006 (E.D. La.). Dkt. Nos. 86-89.

[2] An amended complaint in *West v. Apple Inc.*, No. 11-cv-01370 (D.N.J.), was filed on August 20, 2010. Dkt. No. 158. Amended complaints have not been filed in six actions: *Carr v. Apple Inc.*, No. 09-cv-1996 (N.D. Ohio); *Tran v. Apple Inc.*, No. 09-4048 (N.D. Cal.); *Molina v. Apple Inc.*, No. 09-cv-2032 (S.D. Cal.); and "tag-along actions" *Fernandez v. Apple Inc.*, No. 10-cv-03236 (E.D. La.); *Ishmael v. Apple Inc.*, No. 11-cv-00590 (E.D. La.); and *Wortman v. Apple Inc.*, No. 10-cv-04109 (E.D. La.).

plaintiff's dispute on August 10, 2010. Dkt. Nos. 95-110.[3] Nine days later, plaintiffs served ATTM with dozens of wide-ranging discovery requests, including 37 requests for production, 20 requests for admission, and 15 interrogatories. ATTM provided written responses to plaintiffs' discovery requests, along with more than 400 pages of documents. ATTM also offered to produce over 750 additional pages pending entry of an appropriate protective order to ensure proper handling of confidential materials. On October 26, 2010, instead of responding to ATTM's request for a protective order and reviewing the additional material ATTM offered to produce, plaintiffs filed a motion to compel further discovery responses, arguing that they needed additional discovery from ATTM to challenge their arbitration agreements. Memorandum in Support of Plaintiffs' Motion to Compel Further Discovery Responses from Defendant AT&T Mobility, LLC ("Pls. Mot. to Compel Further Discovery Responses"), Dkt. No. 181-3, at 5. After a status conference, Magistrate Judge Wilkinson issued a minute order indicating that plaintiffs intended to "reduce their request for relief . . . to a narrower range" and that they would "send the court a letter . . . as soon as possible specifying the particular written discovery requests to which [they] continue to seek relief." Dkt. No. 189, at 1-2.

On November 3, 2010, however, the parties agreed to stay the portion of the case relating to plaintiffs' claims against ATTM, in light of the fact that *Concepcion* was pending before the United States Supreme Court. Dkt. No. 193. By Order dated November 9, 2010, the Court denied plaintiffs' motion to compel discovery without prejudice. Dkt. No. 197. On November 17, 2010, the Court stayed all proceedings in this case pending the Supreme Court's decision in *Concepcion*. Dkt. No. 206. The Supreme Court ruled in favor of ATTM in *Concepcion* on April 27, 2011.

[3] ATTM concurrently filed motions to dismiss under Federal Rules of Civil Procedure 9(b) and 12(b)(6). Dkt. Nos. 138-153.

On July 20, 2011, this Court set a status conference for September 22, 2011, and ordered the parties to submit position papers on *Concepcion*'s effect on these cases by September 19, 2011. Dkt. No. 222.

ARGUMENT

I. *Concepcion* Requires That Plaintiffs' Arbitration Agreements Be Enforced.

Concepcion makes clear that each plaintiff's arbitration agreement is fully enforceable under the FAA.

The issue in *Concepcion* was whether the FAA preempted a state-law rule "classifying most collective-arbitration waivers in consumer contracts as unconscionable," which the Supreme Court referred to as "the *Discover Bank* rule." *Concepcion*, 131 S. Ct. at 1746 (citing *Discover Bank v. Super. Ct.*, 113 P.3d 1100 (Cal. 2005)). Answering that question in the affirmative, the Court explained that state laws "[r]equiring the availability of classwide arbitration interfere[] with fundamental attributes of arbitration and thus create[] a scheme inconsistent with the FAA." *Concepcion*, 131 S. Ct. at 1748. "Because it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," the Court held, the "*Discover Bank* rule is preempted by the FAA." *Id.* at 1753 (internal quotation marks omitted). The Court also held that the policy concerns underlying the *Discover Bank* rule are beside the point because "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons." *Id.*

Here, each plaintiff is bound by an ATTM arbitration agreement materially equivalent to the one the Supreme Court considered in *Concepcion*. Thus, any state-law challenges to ATTM's arbitration provision that plaintiffs might seek to advance would be preempted by the FAA.

The weight of post-*Concepcion* authority strongly supports that conclusion. In the five months since *Concepcion* was decided, four federal courts – including the Eleventh Circuit – already have held that ATTM's arbitration agreement is fully enforceable as a matter of law under the FAA. *See Cruz*, 2011 WL 3505016; *Nelson v. AT&T Mobility LLC*, No. C10-4802, 2011 WL 3651153 (N.D. Cal. Aug. 18, 2011); *In re Apple & AT&T iPad Unlimited Data Plan Litig.*, No. C-10-02553, 2011 WL 2886407 (N.D. Cal. July 19, 2011); *Boyer v. AT&T Mobility Servs., LLC*, No. 10CV1258, 2011 WL 3047666 (S.D. Cal. July 25, 2011). As the Eleventh Circuit put it in *Cruz*:

> [W]e now hold that, in light of *Concepcion*, the class action waiver in the Plaintiffs' arbitration agreements is enforceable under the FAA. Insofar as Florida law would invalidate these agreements as contrary to public policy (a question we need not decide), such a state law would "stand[ ] as an obstacle to the accomplishment and execution" of the FAA, and thus be preempted. . . .
>
> Thus, in light of *Concepcion*, state rules mandating the availability of class arbitration based on generalizable characteristics of consumer protection claims – including that the claims "predictably involve small amounts of damages," . . . that the company's deceptive practices may be replicated across "large numbers of consumers," . . . and that many potential claims may go unprosecuted unless they may be brought as a class . . . – are preempted by the FAA, even if they may be "desirable[.]"

2011 WL 3505016, at *1, *6 (citations omitted). And the U.S. Court of Appeals for the Third Circuit recently upheld an arbitration provision that is less favorable to customers than ATTM's, explaining that "the holding of *Concepcion* [is] both broad and clear: a state law that seeks to impose class arbitration despite a contractual agreement for individualized arbitration is inconsistent with, and therefore preempted by, the FAA, irrespective of whether class arbitration 'is desirable for unrelated reasons.'" *Litman v. Cellco P'ship*, No. 08-4103, __ F.3d __, 2011 WL 3689015, at *5 (3d Cir. Aug. 24, 2011) (quoting *Concepcion*, 131 S. Ct. at 1753); *see also Green v. SuperShuttle Int'l, Inc.*, No. 10-3310, __ F.3d __, 2011 WL 3890326, at *3 (8th Cir. Sept. 6, 2011) ("Our reading of *Concepcion* convinces us the state-law-based challenge involved

here suffers from the same flaw as the state-law-based challenge in *Concepcion* – it is preempted by the FAA. Consequently, *Concepcion* forecloses [plaintiff's] claim that the district court erred in concluding the class action waivers were enforceable").[4]

The broad consensus that ATTM's arbitration provision must be enforced in light of *Concepcion* is reflected not only in the decisions of courts that have upheld that provision (or less pro-consumer ones) but also by the fact that many plaintiffs who had filed lawsuits against ATTM have decided to dismiss their claims without resisting arbitration, likely because they recognize that they cannot evade their obligations to arbitrate. These cases include:

- *In re Apple iPhone 4 Prods. Liab. Litig.*, No. 5:10-md-02188 (N.D. Cal.) (claims against ATTM voluntarily dismissed);

[4] For similar reasons, many other courts have relied on *Concepcion* in enforcing agreements to arbitrate on an individual basis that are not as favorable to customers or employees as ATTM's arbitration provision. *See King v. Advance Am., Cash Advance, Ctrs., Inc.*, No. 07-237, 07-3142, 2011 WL 3861898 (E.D. Pa. Aug. 31, 2011); *Clerk v. Cash Am. Net of Nevada, LLC*, No. 09-2245, 2011 WL 3740579 (E.D. Pa. Aug. 25, 2011); *Clerk v. Cash Cent. of Utah, LLC*, No. 09-4964, 2011 WL 3739549 (E.D. Pa. Aug. 25, 2011); *Alfeche v. Cash Am. Int'l Inc.*, No. 09-0953, 2011 WL 3565078 (E.D. Pa. Aug. 12, 2011); *Carney v. Verizon Wireless Telecom, Inc.*, No. 09CV1854, 2011 WL 3475368 (S.D. Cal. Aug. 9, 2011); *Swift v. Zynga Game Network, Inc.*, No. C-09-5443, 2011 WL 3419499 (N.D. Cal. Aug. 4, 2011); *Murphy v. DirectTV*, No. 2:08-cv-06465, 2011 WL 3319574 (C.D. Cal. Aug. 2, 2011); *Carrell v. L & S Plumbing P'ship, Ltd.*, No. H-10-2523, 2011 WL 3300067 (S.D. Tex. Aug. 1, 2011); *In re Gateway LX6810 Computer Prods. Litig.*, No. SACV 10-1563, 2011 WL 3099862 (C.D. Cal. July 21, 2011); *Estrella v. Freedom Fin.*, No. C 09-03156, 2011 WL 2633643 (N.D. Cal. July 5, 2011); *Hopkins v. World Acceptance Corp.*, No. 1:11-cv-03429, __ F. Supp. 2d __, 2011 WL 2837595 (N.D. Ga. June 29, 2011); *In re Cal. Title Ins. Antitrust Litig.*, No. 08-01341, 2011 WL 2559633 (N.D. Cal. June 27, 2011); *Wolf v. Nissan Motor Acceptance Corp.*, No. 10-cv-3338, 2011 WL 2490939 (D.N.J. June 22, 2011); *Villegas v. US Bancorp*, No. C 10-1762, 2011 WL 2679610 (N.D. Cal. June 20, 2011); *Bernal v. Burnett*, No. 10-cv-01917, 2011 WL 2182903 (D. Colo. June 6, 2011); *D'Antuono v. Serv. Rd. Corp.*, No. 3:11cv33, 2011 WL 2175932 (D. Conn. May 25, 2011); *Arellano v. T-Mobile USA, Inc.*, No. C 10-05663, 2011 WL 1842712 (N.D. Cal. May 16, 2011); *Zarandi v. Alliance Data Sys. Corp.*, No. CV 10-8309, 2011 WL 1827228 (C.D. Cal. May 9, 2011); *Day v. Persels & Assocs.*, No. 8:10-CV-2463, 2011 WL 1770300 (M.D. Fla. May 9, 2011); *Bellows v. Midland Credit Mgmt., Inc.*, No. 09CV1951, 2011 WL 1691323 (S.D. Cal. May 4, 2011); *Wallace v. Ganley Auto Group*, No. 95081, 2011 WL 2434093 (Ohio Ct. App. June 16, 2011); *see also Fensterstock v. Educ. Fin. Partners*, No. 09-1562-cv, 2011 WL 2580166 (2d Cir. June 30, 2011) (concluding that *Concepcion* was dispositive of plaintiff's argument that the requirement that he arbitrate on an individual basis is unconscionable under California law and remanding for consideration of other issues).

- *In re Apple iPhone 3G Prods. Liab. Litig.*, No. 5:09-md-02045 JW (N.D. Cal.) (claims against ATTM dropped from post-*Concepcion* amended complaint);

- *Fay v. New Cingular Wireless PCS, LLC*, No. 10-3814 (8th Cir.) (voluntarily dismissed after plaintiff appealed district court's order granting ATTM's motion to compel arbitration and ATTM moved for summary affirmance);

- *Barker v. AT&T Wireless PC, LLC*, No. 2:11-482 (E.D. La.) (voluntarily dismissed after ATTM moved to com*pel arbitration);*

- *Gaspar v. AT&T Mobility, LLC*, No. 2:10-cv-02136 (C.D. Cal.) (voluntarily dismissed after ATTM filed renewed motion to compel after issuance of *Concepcion*);

- *George v. AT&T Mobility LLC*, No. 9:10-81588-CIV (S.D. Fla.) (voluntarily dismissed after *Concepcion*);

- *Kaplan v. AT&T Mobility, LLC*, No. 2:10-cv-03594 (C.D. Cal.) (voluntarily dismissed after ATTM filed a supplemental brief on the effect of *Concepcion*); and

- *Young v. AT&T Mobility LLC*, *N*o. 8:08-cv-00313 (C.D. Cal.) (voluntarily dismissed after issuance of *Concepcion*).

In short, any attempt by plaintiffs to proceed with this class action is futile in light of *Concepcion*.

II. The Discovery Sought By Plaintiffs Is Improper Under The FAA.

Concepcion underscores that plaintiffs' request for discovery is nothing more than an improper fishing expedition aimed at imposing unnecessary costs on ATTM. Indeed, well before *Concepcion*, this Court recognized that there was no need for the kind of wide-ranging discovery plaintiffs seek because the enforceability of their arbitration agreements is a question of law:

> What I'm saying, one way or another, you're signing up for some agreement. It's in the agreement. Whatever it is, it is. I just don't understand what kind of discovery you're going to need on that. It seems to me they could tee that up as a legal issue.

Tr. of Jan. 15, 2010 status conference, Dkt. No. 21, at 22; *see also id.* at 21 (noting that whether an arbitration agreement is unconscionable is a legal, not factual, issue); *id.* at 25 (noting that arbitrability is a legal issue).

Concepcion confirms this Court's observation that whether ATTM's arbitration provision is enforceable is a question of law, and answers the question by concluding that federal law mandates enforcing the provision. As the Supreme Court explained, the terms of ATTM's arbitration provision are "sufficient to provide incentive for the individual prosecution of meritorious claims that are not immediately settled," and "aggrieved customers who filed claims would be 'essentially guarantee[d]' to be made whole." *Concepcion*, 131 S. Ct. at 1753 (quoting *Laster v. AT&T Mobility LLC*, 584 F.3d at 856 n.9). In fact, the Court recognized that plaintiffs are "*better off* under their arbitration agreement with [ATTM] than they would have been as participants in a class action." *Id.* (emphasis in original). No amount of discovery can justify disregarding those conclusions.

For these reasons, the Eleventh Circuit recently rejected – as a matter of law – a similar challenge to ATTM's arbitration provision, which relied on purported "evidentiary proof regarding whether parties could vindicate their statutory rights in arbitration." *Cruz*, 2011 WL 3505016, at *6. The plaintiffs in *Cruz* argued that "evidence" they had amassed proved that they could not vindicate their rights because "it would not be cost-effective for them to pursue" their "legally complex but small-value claims" individually. *Id.* at *5, *7. But the Eleventh Circuit concluded that such "evidence goes only to substantiating the very public policy arguments that were expressly rejected by the Supreme Court in *Concepcion* – namely, that the class action waiver will be exculpatory because most of these small-value claims will go undetected and unprosecuted." *Id.* at *8. Thus, "such an argument is foreclosed here, because the *Concepcion* Court examined *this very arbitration agreement* and concluded that it did not produce such a

result." *Id.* (citation and footnote omitted). In other words, in light of *Concepcion*, plaintiffs here have no need to compile "evidence as to whether the clause blocks individuals from pursuing legal rights." Pls.' Mot. to Compel Further Discovery Responses, Dkt. No. 181-3, at 5. For the reasons explained by the Eleventh Circuit, that contention is foreclosed as a matter of law.[5]

The discovery plaintiffs request is not merely irrelevant in light of *Concepcion*; it runs headlong into the purposes and objectives of the FAA. As the Supreme Court has explained, "Congress's clear intent, in the [FAA], [was] to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Mem'l. Hosp. v. Mecury Constr. Corp.*, 460 U.S. 1, 22 (1983); *see also Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967) ("[T]he unmistakably clear congressional purpose" of the FAA was "that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts."); *Preston v. Ferrer*, 552 U.S. 346, 357-58 (2008) ("A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results.'") (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633 (1985)). Permitting plaintiffs to take discovery would frustrate the FAA's

[5] In fact, the Supreme Court in *Concepcion* was itself presented with the kind of evidence plaintiffs here claim the need to gather. In an *amicus* brief submitted in support of the *Concepcion* plaintiffs, counsel for plaintiffs in another putative class action against ATTM – *Coneff v. AT&T Corp.*, 620 F. Supp. 2d 1248 (W.D. Wash. 2009) – offered the same arguments, along with the record they and other plaintiffs had compiled in district court proceedings. *See* Br. of *Amici Curiae* Marygrace Coneff, *Concepcion*, 2010 WL 3973886. There, the *amici* argued that they had "successfully proven that AT&T's class action ban would as a factual matter exculpate AT&T from liability" and thus that ATTM's arbitration provision does not "provide[] customers with an effective means of redress." *Id*. at *2. That argument relied entirely on what the *amici* called "[t]he rich factual record developed in *Coneff*, along with that of another putative class action against AT&T, *Cruz v. Cingular Wireless, LLC*, . . . 2008 WL 4279690 (M.D. Fla. Sept. 15, 2008)." *Id*. at *7-*8. Needless to say, it did not persuade the Supreme Court.

purposes, creating the very "delay and obstruction in the courts" (*Prima Paint*, 388 U.S. at 404) that the FAA was enacted to prevent.

Since *Concepcion* was decided, each federal court to consider the question has refused to permit the kind of discovery concerning ATTM's arbitration provision that plaintiffs seek here. As one federal court put it, "[t]he argument that plaintiffs seek to support through arbitration[-]related discovery has already been addressed and rejected by the Supreme Court." *In re iPad*, 2011 WL 2886407, at *6. Another federal court summarily denied a plaintiff's request for arbitration-related discovery, finding it "neither necessary nor proper." Order, *Kaplan v. AT&T Mobility, LLC*, No. 10-3594-CAS(Ex) (C.D. Cal. Aug. 9, 2011) (attached as Exhibit A). In short, plaintiffs do not need discovery to determine whether ATTM's arbitration provision "is enforceable as a matter of public policy" or "unfairly inhibits Plaintiffs' . . . right to recovery." Dkt. No. 181-3 at 4. *Concepcion* already has answered the relevant questions.

Courts have reached the same conclusion even in cases involving arbitration provisions that are less consumer-friendly than ATTM's (and which were not expressly approved by the Supreme Court). As one federal court put it, plaintiffs' request for discovery "directed at whether the class-waiver clause itself is unlawful" – because it was, in plaintiffs' view, exculpatory and unconscionable – "falls outside this Court's role . . . in light of *Concepcion* and *Litman*." *King*, 2011 WL 3861898, at *4-*6. Another court observed that "discovery as to the potential damages [plaintiff] can recover individually" was "simply irrelevant to the substantive unconscionability inquiry" in light of *Concepcion*, which rejected that "argument that class actions are necessary to bring small-dollar claims that might otherwise slip through the legal

system." *Black v. JP Morgan Chase & Co.*, No. 10-848 2011 WL 3940236, at *21 (W.D. Pa. Aug. 25, 2011).[6]

* * * * *

In short, plaintiffs cannot explain how discovery would enable them to prevail on arguments that the Supreme Court, and numerous other federal courts in its wake, have repeatedly and unequivocally rejected. This Court should not subject ATTM to the very litigation expenses and delays associated with discovery that the parties' arbitration agreements were intended to avoid.

III. ATTM Proposes An Orderly Process.

ATTM proposes the schedule set forth below, which will provide an orderly process for the parties to address the motions to compel arbitration and (if necessary) for the Court to resolve any disputes regarding arbitration discovery.

Deadline for defendants to file renewed motions to compel arbitration (or motions to compel arbitration in cases where a motion was not previously filed)	October 20, 2011 (28 days after the September 22, 2011 status conference)
Deadline for plaintiffs to file oppositions to motions to compel arbitration	30 days after filing of motions to compel arbitration
Deadline for defendants to file replies in support of motions to compel arbitration	21 days after filing of plaintiffs' oppositions

CONCLUSION

For the reasons set forth above, the Court should establish a schedule to address ATTM's motions to compel arbitration in light of *Concepcion*, and deny any requests by plaintiffs for further discovery at this time.

[6] In a handful of cases, courts have authorized arbitration-related discovery post-*Concepcion*. In addition to being inconsistent with the FAA and *Concepcion*, these cases also are irrelevant, because, unlike this case, they did not involve arbitration provisions the Supreme Court has considered and approved.

Dated: September 19, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2011, I served the foregoing by causing it to be filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to case participants.

/s/ Kathleen Taylor Sooy
Kathleen Taylor Sooy