

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
 AVI KOSCHITZKI, on Behalf of Himself and
 all Others Similarly Situated,
 Plaintiff,
 vs.
 APPLE INC. and AT&T MOBILITY LLC,
 Defendant.
 ----- X

Civil Action No. 1:08-cv-04451-JBW-VVP

**DECLARATION OF ADAM GILL IN
SUPPORT OF DEFENDANT AT&T
MOBILITY LLC’S MOTION TO
COMPEL ARBITRATION AND
DISMISS ACTION**

I, Adam Gill, declare as follows:

1. The following facts are of my own personal knowledge, and if called as a witness I could and would testify competently as to their truth.

2. I am employed by AT&T Mobility LLC (“ATTM”) (formerly Cingular Wireless LLC) as Senior Area Manager of the Customer Experience Team and Converged Services group. I am familiar with the routine business policies and procedures by which customers may place a telephone order for both wireless service and cellular phones from ATTM. I am also familiar with the routine business policies and procedures concerning how such customers are presented with and accept the terms and conditions of ATTM service. In addition, I am familiar with the manner in which documents containing ATTM’s terms of service are stored and may be retrieved in the regular and ordinary course of business.

3. As a matter of ATTM’s routine business policies and practices, when a customer places a telephone order with an ATTM customer care representative for a cellular phone and wireless service for that phone, that customer is sent a Customer Guide enclosed within a Quick

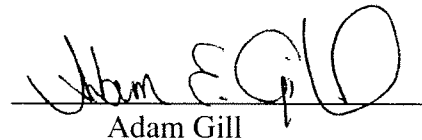
Start Guide along with the shipment containing the cellular phone. To the customer, both documents appear to be a single document entitled a Quick Start Guide.

4. Attached as Exhibit 1 is a true and correct copy of the form Quick Start Guide in effect in August 2008.

5. Attached as Exhibit 2 is a true and correct copy of the form Customer Guide in effect in August 2008. The Customer Guide, which is enclosed within the Quick Start Guide (the document attached as Exhibit 1), contains ATTM's terms of service.

6. Both the Quick Start Guide and the Customer Guide instruct a customer to activate his or her cellular phone either online or by using ATTM's Interactive Voice Response ("IVR") system to accept the terms of ATTM's wireless service. The IVR system asks a series of questions. In order to activate his or her cellular phone, a customer must push a button on his or her telephone keypad indicating that he or she agrees to the terms of ATTM's wireless service. If the customer fails to indicate that he or she accepts those terms, the IVR system will decline the contract, thereby preventing service from being connected.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 20, 2008.


Adam Gill