

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
AVI KOSCHITZKI, on Behalf of Himself and
all Others Similarly Situated, : Civil Action No. 1:08-cv-04451-JBW-VVP
:
Plaintiff, : **SUPPLEMENTAL DECLARATION OF**
:
vs. : **TJ TERRY IN SUPPORT OF**
:
APPLE INC. and AT&T MOBILITY LLC, : **DEFENDANT AT&T MOBILITY**
:
Defendant. : **LLC'S MOTION TO COMPEL**
:
: **ARBITRATION AND DISMISS**
:
: **ACTION**
:
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I, TJ Terry, declare as follows:

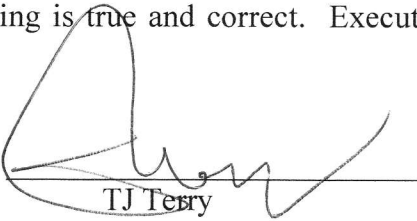
1. The following facts are of my own personal knowledge, and if called as a witness I could and would testify competently as to their truth.

2. I am currently employed by Apple Inc. ("Apple") as Senior Manager of Store Operations. My prior position, which I held from June 2006 until July 2008, was Manager of Daily Operations and Store Support, Apple Retail. In my capacity as Senior Manager of Store Operations, I am familiar with Apple's records of iPhone 3G sales.

3. In Paragraph 7 of my prior declaration in support of AT&T Mobility's Motion to Compel Arbitration, I stated that I had reviewed Apple's records regarding plaintiff Avi Koschitzki's purchase of an iPhone 3G at an Apple Retail Store on August 31, 2008. As also indicated in Paragraph 7 of my previous declaration, those records indicate Mr. Koschitzki executed his signature on an EZ Pay handheld device assenting to AT&T's Terms of Service. Attached as Exhibit A hereto is a true and correct copy of the Apple record that I reviewed in coming to that conclusion. Exhibit A reflects Mr. Koschitzki's electronically stored signature from the EZ Pay device. The line immediately above Mr. Koschitzki's signature, "AT&T T&C:

Y,” refers to the second checkbox on the EZ Pay device, attached as Exhibit 1 to my previous declaration, and indicates acceptance of AT&T’s Terms of Service. Other proprietary information unrelated to this issue has been redacted from Apple’s record of Mr. Koschitzki’s purchase printout to preserve confidentiality.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Cupertino, California on February 20, 2009.



TJ Terry