

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
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
**SUPPLEMENTAL DECLARATION OF
THEODORE WEIMAN IN SUPPORT
OF DEFENDANT AT&T MOBILITY
LLC'S MOTION TO COMPEL
ARBITRATION AND DISMISS
ACTION**

I, Theodore Weiman, hereby 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 as an attorney by the law firm of Mayer Brown LLP.
3. In November 2008, I submitted a declaration in support of the motion to compel arbitration submitted by AT&T Mobility LLC (“ATTM”) in this action. I submit this supplemental declaration to provide additional information that the Court may find relevant to the motion.
4. On February 23, 2009, I visited the Virgin Mobile web site (at <http://www.virginmobileusa.com/>), followed the link at the bottom of the page marked “LEGAL MATTERS,” and then followed the link for Virgin Mobile’s “Terms of Service.” A true and correct printout of that web page (<http://web.virginmobileusa.com/about/terms-and-conditions>) is attached as Exhibit 1.
5. On February 24, 2009, I visited the T-Mobile web site (at <http://www.t-mobile.com>) and followed the link at the bottom of the web page marked “Terms and

Conditions.” A true and correct printout of that web page (http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true), which states that the terms it displays are “[e]ffective June 28, 2008,” is attached as Exhibit 2.

6. On February 24, 2009, I visited the T-Mobile web page entitled “T-Mobile Takes Customization to a New Level With The Latest T-Mobile Sidekick” (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080730&title=T-Mobile%20Takes%20Customization%20to%20a%20New%20Level%20With%20The%20Latest%20T-Mobile%20Sidekick). The web page is dated July 30, 2008 and states that “[t]he new T-Mobile Sidekick is available today at select T-Mobile retail stores and online at www.t-mobile.com.” Attached hereto as Exhibit 3 is a true and correct printout of that web page.

7. On February 24, 2009, I visited the T-Mobile web page entitled “T-Mobile Launches the T-Mobile Shadow—the First in a Planned Family of People-Centric Phones Built to Help Customers Stick Together with Those Who Matter Most” (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20071029&title=T-Mobile%20Launches%20the%20T-Mobile%20Shadow%20%E2%80%93%20the%20First%20in%20a%20Planned%20Family%20of%20People-Centric%20Phones%20Built%20to%20Help%20Customers%20Stick%20Together%20with%20Those%20Who%20Matter%20Most). The web page is dated October 29, 2007 and states that “[t]he T-Mobile Shadow * * * will be available exclusively to T-Mobile customers beginning Oct. 31 at T-Mobile retail stores and online at www.t-mobile.com.” Attached hereto as Exhibit 4 is a true and correct printout of that web page.

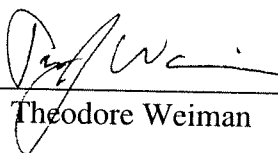
8. On February 24, 2009, I visited the T-Mobile web page entitled “T-Mobile and RIM Introduce BlackBerry Curve 8320 With WI-FI Calling Feature” (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20090219&title=T-Mobile%20and%20RIM%20Introduce%20BlackBerry%20Curve%208320%20With%20WI-FI%20Calling%20Feature)

mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20070925&title=T-Mobile%20and%20RIM%20Introduce%20BlackBerry%20Curve%208320%20With%20WiFi%20Calling%20Feature). The web page is dated September 25, 2007 and states that “[t]he new BlackBerry Curve 8320 from T-Mobile is available at T-Mobile retail stores, select authorized dealers, online at www.t-mobile.com, or by calling 1-800-T-MOBILE.” Attached hereto as Exhibit 5 is a true and correct printout of that web page.

9. On February 24, 2009, I visited the T-Mobile web page entitled “T-Mobile Unveils a New Full-Featured Smartphone, the T-Mobile Wing” (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20070522&title=T-Mobile%20Unveils%20a%20New%20Full-Featured%20Smartphone,%20the%20T-Mobile%20Wing). The web page is dated May 22, 2007 and states that “[t]he T-Mobile Wing will be available exclusively to T-Mobile customers beginning May 22 at T-Mobile retail stores and online at www.t-mobile.com.” Attached hereto as Exhibit 6 is a true and correct printout of that web page.

10. On February 24, 2009, I visited the T-Mobile web page entitled “T-Mobile Unveils a New Full-Featured Smartphone, the T-Mobile Dash” (at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20061011&title=T-Mobile%20Unveils%20a%20New%20Full-Featured%20Smartphone,%20the%20T-Mobile%20Dash). The web page is dated October 11, 2006 and states that “[t]he T-Mobile Dash will be available exclusively to T-Mobile customers beginning Oct. 25 at T-Mobile retail stores and online at www.t-mobile.com.” Attached hereto as Exhibit 7 is a true and correct printout of that web page.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 24, 2009 at Washington, D.C.


Theodore Weiman