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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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**AT&T CORP.,**

**Appellant,**

**v.**

**MICHAEL McKEE,**

**Respondent.**

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**APPEAL FROM THE SUPERIOR COURT  
FOR CHELAN COUNTY  
HONORABLE JOHN E. BRIDGES**

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**RESPONDENT'S STATEMENT OF ADDITIONAL AUTHORITIES**

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### **STATEMENT OF ADDITIONAL AUTHORITIES**

Pursuant to RAP 10.8, Respondent submits this statement of additional authorities to provide the Court with two recent decisions.

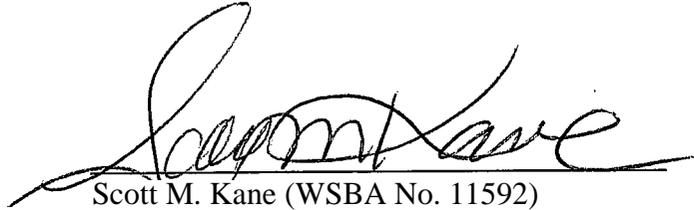
In *Schwartz v. Alltel Corp.*, No. 86810 (Ohio Ct. App. June 29, 2006), the Ohio Court of Appeals held that the arbitration clause in Alltel's wireless contract, which prohibits class treatment or consolidation of any claims, is unconscionable under Ohio law. The *Schwartz* court first held that the arbitration clause is substantively unconscionable. Slip Op. at 10-12. The court noted that, "[b]y eliminating a consumer's right to proceed through a class action, the arbitration clause directly hinders the consumer protection purposes of the [Ohio Consumer Sales Protection Act]." Slip. Op. at 10. The court further noted that, "[b]y prohibiting its customers from filing suit as a class, Alltel prevents the cost effective use of class action litigation that can end abusive practices by large corporations in those instances in which individual claims are ineffective." Slip Op. at 11. That holding is relevant to Respondent's argument that the class action ban in AT&T's consumer contract is unconscionable under Washington law because it would effectively serve as an exculpatory clause. Br. of Respondent at 35-39.

Second, the *Schwartz* court held that Alltel's arbitration clause, because it was drafted by the stronger party and contained small, hard-to-

read print, is procedurally unconscionable. Slip Op. at 12-13. That holding is relevant to Respondent's argument that AT&T's arbitration clause is procedurally unconscionable. Br. of Respondent at 39-42.

In *Wong v. T-Mobile U.S.A.*, No. 05-73922 (E.D. Mich. July 20, 2006), the U.S. District Court for the Eastern District of Michigan held that T-Mobile's arbitration clause, which contained an unseverable class action ban, was unenforceable because class actions are necessary for the vindication of consumers' rights under state consumer protection statutes. Slip Op. at 3-8. The court noted: "Defendant makes much of the fact that it contributes toward plaintiffs' arbitration costs, but in order for arbitration to be feasible, the amount at issue must also exceed the value in time and energy required to arbitrate a claim. Defendant is alleged to have bilked its customers out of millions of dollars, though only a few dollars at a time. Plaintiff's damages are a paltry \$19.74, hardly enough to make arbitration worthwhile. Class actions were designed for situations like this." Slip Op. at 8. That holding is relevant to Respondent's argument that the class action ban in AT&T's consumer contract would effectively serve as an exculpatory clause, and thus is unconscionable. Br. of Respondent at 35-39.

Respectfully submitted this 25<sup>th</sup> July, 2006

A handwritten signature in black ink, appearing to read "Scott M. Kane". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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