

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DOUG SCOTT, a married man,
LOREN R. TABASINSKE and
SANDRA K. TABASINSKE, husband
and wife,

Plaintiffs,

v.

CINGULAR WIRELESS LLC, a
corporation, and JOHN DOES 1-XX,

Defendant.

NO. 04-2-04205-4KNT

DECLARATION OF GERALD
STRATHMANN

Gerald Strathmann declares as follows:

1. This declaration is based upon my personal knowledge.
2. I have served as Assistant Vice President for the American Arbitration Association (hereinafter AAA) from June of 1995 to the present. Previously, I served as Deputy Director, Supervisor and Case Administrator at various times since joining the AAA in August, 1984.
3. In my current capacity, I oversee consumer case administration at all AAA offices. As such, I am fully knowledgeable about AAA rules and procedures.
4. I have prepared this declaration in lieu of personally appearing in Seattle, Washington for a deposition after service of a subpoena, dated

DECLARATION OF GERALD STRATHMANN - 1 MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC

ATTORNEYS AT LAW
5500 BANK OF AMERICA TOWER
701 FIFTH AVENUE
SEATTLE, WA 98104-7096
(206) 682-7090 TEL
(206) 625-9534 FAX

ORIGINAL

June 24, 2004, by Plaintiffs in the litigation, *Doug Scott, et al. v. Cingular Wireless, et al.*, in the Superior Court of the State of Washington for King County, Case No. 04-2-04205-4KNT.

5. As a neutral and impartial organization that administers various dispute resolution processes, the AAA takes no position on the merits of the parties' disputes or the enforceability of the arbitration agreement, or agreements between the parties. Instead, the AAA provides this declaration to assist the court and the parties in providing information relating to some of the issues raised in this litigation.
6. To date, the AAA has not received a demand for arbitration from any of the Plaintiffs to this action. I have also not been presented with information concerning the amount of claim for this dispute.
7. I have reviewed the Complaint that was filed by the Plaintiffs to this action, the arbitration agreements between the parties contained within the terms and conditions of the wireless service agreements ("Initial Arbitration Agreement"), and a copy of a revised arbitration clause apparently mailed to the Plaintiffs by Cingular ("Revised Clause"). A copy of the Complaint is attached as Exhibit "A", a copy of the Initial Arbitration Agreement(s) is attached as exhibit "B", and a copy of the Revised Clause is attached as Exhibit "C". The AAA takes no position whether the Initial Arbitration Agreement or the Revised Clause is applicable to the parties' dispute.
8. Based upon a review of the AAA records from January 1, 1998 to the present, there does not appear to have been any arbitrations filed under the attached Initial Arbitration Agreements or the Revised Clause by residents of the state of Washington.
9. Based upon a review of the AAA records, the AAA has no written agreements or understandings specifically with Cingular. Attached as Exhibit "D" is a copy of a Consumer Due Process Protocol, a statement of principles and standards aimed at promoting fair procedures that protect consumers in arbitration.

THE REVISED CLAUSE

10. Based upon my review of the Complaint and the Revised Clause, it appears that if the AAA administered an arbitration of the dispute involving these individual Plaintiffs and Cingular under these documents, the *Supplementary Procedures for Consumer-Related Disputes* (hereinafter "*Consumer Rules*") and the AAA's *Commercial Dispute Resolution Procedures* (hereinafter "*Commercial Rules*") would apply. A copy of the *Consumer Rules* effective July 1, 2003 is attached

as Exhibit "E." A copy of the *Commercial Rules* as amended and effective July 1, 2003 is attached as Exhibit "F."

11. AAA's *Consumer Rules* are applicable because the parties' dispute appears to be a consumer-related dispute, and Rule C-1 (a) provides in part that:

"The Commercial Dispute Resolution Procedures and these Supplementary Procedures for Consumer-Related Disputes shall apply whenever the American Arbitration Association (AAA) or its rules are used in an agreement between a consumer and a business where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use."

12. As Rule C-1 (d) further provides, "Parties can still take their claims to a small claims court." Accordingly, AAA's *Consumer Rules* specifically allow parties, who have a binding arbitration provision, to resolve their dispute in a small claims court pursuant to the jurisdiction of that court.
13. Pursuant to AAA's *Consumer Rules*, under the Rule C-8 "Administrative Fees and Arbitrator Fees," if the consumer's actual damages claim or counterclaim, exclusive of punitive damages and attorney's fees, does not exceed \$10,000, a consumer must accompany his or her demand for arbitration with a deposit of \$125 as his or her portion of the arbitrator's fees. The consumer will pay nothing further for arbitrator's fees. The consumer does not pay any administrative fee to the AAA. The responding business must then pay a \$500 administrative fee to the AAA, a case service fee in the amount of \$200 if a hearing is held, and arbitrator fees in the amount of at least \$125. Arbitrator fees for consumer cases in which no claim exceeds \$75,000 are \$250 for a desk arbitration or telephone hearing, and \$750 (per day of hearing) for an in-person hearing. Unused arbitrator fee deposits, if any, are returned at the end of the case.
14. Pursuant to AAA's *Consumer Rules*, under the Rule C-8 "Administrative Fees and Arbitrator Fees," if the consumer's actual damages claim or counterclaim, exclusive of punitive damages and attorney's fees, is

greater than \$10,000 but does not exceed \$75,000, a consumer is responsible for one-half of the arbitrator's fee, up to a maximum of \$375 as his or her portion of the arbitrator's fee. The consumer will pay nothing further for arbitrator fees. The consumer does not pay any administrative fee to the AAA. The responding business must then pay a \$750 administrative fee to the AAA, a case service fee in the amount of \$300 if a hearing is held, and arbitrator's fees beyond those that are the responsibility of the consumer. Arbitrator fees for consumer cases in which no claim exceeds \$75,000 are \$250 for a desk arbitration or telephone hearing, and \$750 (per day of hearing) for an in-person hearing. Unused arbitrator fee deposits, if any, are returned at the end of the case.

15. Pursuant to AAA's *Consumer Rules*, under the Rule C-8 "Administrative Fees and Arbitrator Fees," if the consumer's actual damages claim or counterclaim is greater than \$75,000, or if the consumer's claim or counterclaim seeks non-monetary relief, the consumer must pay an administrative fee in accordance with the *Commercial Rules'* fee schedule and deposit one half of the arbitrator's compensation. Each individual arbitrator establishes his or her own rate of compensation.
16. The *Commercial Rules'* fee schedule can be found in the section entitled "Administrative Fees." The initial filing fee and/or case service fee is determined by the amount of the claim, counterclaim or additional claim that is filed. If a claim or counterclaim is not for monetary damages, the initial filing fee is \$3,250 and the case service fee is \$1,250, the latter payable only if the case proceeds to its first hearing. If a claim or counterclaim is for monetary damages, but fails to state an actual monetary amount, the consumer is subject to the highest possible filing fee of \$10,000. This fee is subject to increase or decrease when the actual monetary claim or counterclaim is disclosed. After the actual monetary claim has been disclosed, if the amount is under \$75,000, the fees will be adjusted in accordance with the *Consumer Rules* and any administrative fees paid will be refunded to the consumer. The consumer will then only be responsible for the arbitrator compensation as set forth in the *Consumer Rules*. In cases in which the consumer's claimed actual damages are above \$75,000, or in which non-monetary damages are sought, the business would normally pay one half of the arbitrator's compensation and hearing room rental but has no additional administrative or case service fees, unless the business files a counterclaim over \$75,000 or a counterclaim that is non-monetary, in which case, the Commercial Fee Schedule would apply to the business.

17. Rule 51 of the *Commercial Rules*, entitled "Neutral Arbitrator's Compensation" subsection (b) states, "Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation, beginning with the first day of hearing in all cases with claims exceeding \$10,000." Each individual arbitrator establishes his or her own rate of compensation. A random sampling of 125 arbitrators on the Commercial Panel in Washington State provides the following compensation information: (a) Arbitrator compensation ranges from \$700 to \$2,550 per day; (b) The average (mean) daily rate of arbitrator compensation is \$1,573; (c) The median daily rate of arbitrator compensation is \$1,587.50. There is no specific rule that governs when arbitrator compensation is due, but generally, pursuant to Rule 52, anticipated arbitrator compensation is due prior to the first evidentiary hearing, with any unexpended balance being returned to the parties at the end of the case.
18. The AAA has no authority to change, modify or waive arbitrator compensation.
19. Rule 50 of the *Commercial Rules*, entitled "Expenses" states "All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties."
20. Notwithstanding the above, the Revised Clause sent to the Plaintiffs in this matter states: "Except as otherwise provided for herein, Cingular will pay all AAA filing, administration, and arbitrator fees. If, however, the arbitrator finds that either the substance of your claim or the relief sought is improper, or not warranted, as measured by the standards set forth in Federal Rule of Civil Procedure 11(b), then the payment of all such fees shall be governed by the AAA rules."

The Initial Arbitration Agreement

21. Based upon my review of the Complaint and the Initial Arbitration Agreement, it appears that if the AAA administered an arbitration of the dispute involving these individual plaintiffs and Cingular under these documents, the *Consumer Rules*, referenced above, would again be applicable and the AAA's *Wireless Industry Arbitration Rules* (hereinafter *Wireless Rules*) would apply. A true and authentic copy of the *Wireless Rules* effective July 1, 2003 is attached as Exhibit "G."

1 22. Again, AAA's *Consumer Rules* are applicable because the parties'
2 dispute appears to be a consumer-related dispute, and Rule C-1 (a)
3 provides in part that:

4 "The Commercial Dispute Resolution
5 Procedures and these Supplementary
6 Procedures for Consumer-Related
7 Disputes shall apply whenever the
8 American Arbitration Association (AAA) or
9 its rules are used in an agreement
10 between a consumer and a business
11 where the business has a standardized,
12 systematic application of arbitration
13 clauses with customers and where the
14 terms and conditions of the purchase of
15 standardized, consumable goods or
16 services are non-negotiable or primarily
17 non-negotiable in most or all of its terms,
18 conditions, features, or choices. The
19 product or service must be for personal or
20 household use."

21 23. As Rule C-1(c) of the *Consumer Rules* further provides, "The AAA may
22 substitutethe Wireless Industry Arbitration Rules, for the
23 Commercial Dispute Resolution Procedures in some cases."

24 24. Again, the same as paragraph 12 above, Rule C-1 (d) of the *Consumer*
25 *Rules* provides, "Parties can still take their claims to a small claims
26 court." Accordingly, AAA's *Consumer Rules* specifically allow parties
who have a binding arbitration provision to resolve their dispute in a
small claims court pursuant to the jurisdiction of that court.

27 25. Again, the same as paragraph 13 above, pursuant to AAA's *Consumer*
28 *Rules*, under the Rule C-8 "Administrative Fees and Arbitrator Fees," if
29 the consumer's actual damages claim or counterclaim, exclusive of
30 punitive damages and attorney's fees, does not exceed \$10,000, a
31 consumer must accompany his or her demand for arbitration with a
32 deposit of \$125 as his or her portion of the arbitrator fees. The
33 consumer will pay nothing further for arbitrator fees. The consumer
34 does not pay any administrative fee to the AAA. The responding
35 business must then pay a \$500 administrative fee to the AAA, a case
36 service fee in the amount of \$200 if a hearing is held, and arbitrator
fees in the amount of at least \$125. Arbitrator fees for consumer cases
in which no claim exceeds \$75,000 are \$250 for a desk arbitration or
telephone hearing, and \$750 (per day of hearing) for an in-person
hearing. Unused arbitrator fee deposits, if any, are returned at the end
of the case.

- 1 26. Again, the same as paragraph 14 above, pursuant to AAA's *Consumer*
2 *Rules*, under the Rule C-8 "Administrative Fees and Arbitrator Fees," if
3 the consumer's actual damages claim or counterclaim, exclusive of
4 punitive damages and attorney's fees, is greater than \$10,000 but does
5 not exceed \$75,000, a consumer is responsible for one-half of the
6 arbitrator's fee, up to a maximum of \$375 as his or her portion of the
7 arbitrator's fee. The consumer will pay nothing further for arbitrator
8 fees. The consumer does not pay any administrative fee to the AAA.
9 The responding business must then pay a \$750 administrative fee to
10 the AAA, a case service fee in the amount of \$300 if a hearing is held,
11 and arbitrator fees beyond those that are the responsibility of the
12 consumer. Arbitrator fees for consumer cases in which no claim
13 exceeds \$75,000 are \$250 for a desk arbitration or telephone hearing,
14 and \$750 (per day of hearing) for an in-person hearing. Unused
15 arbitrator fee deposits, if any, are returned at the end of the case.
- 16 27. Pursuant to AAA's *Consumer Rules*, under the Rule C-8 "Administrative
17 Fees and Arbitrator Fees," if the consumer's actual damages claim or
18 counterclaim is greater than \$75,000, or if the consumer's claim or
19 counterclaim seeks non-monetary relief, the consumer must pay an
20 administrative fee in accordance with the *Commercial Rules'* fee
21 schedule and deposit one half of the arbitrator's compensation.
22 However, since a review of the Initial Arbitration Agreement indicated
23 that the *Wireless Rules* are applicable, if the consumer's actual
24 damages claim or counterclaim is greater than \$75,000, or if the
25 consumer's claim or counterclaim seeks non-monetary relief, the AAA
26 would require the consumer to pay an administrative fee in accordance
with the *Wireless Rules'* fee schedule.
28. The *Wireless Rules'* fee schedule can be found in the section entitled
"Administrative Fees". Should no amount be stated at filing, the
minimum fee is \$2000, subject to increase when the actual claim or
counterclaim is disclosed. When a claim or counterclaim is not for a
monetary amount, an appropriate filing fee will be determined by the
AAA. The minimum filing fee for any case having three or more
arbitrators is \$2000. The administrative fee for claims in excess of
\$5,000,000 will be negotiated. Additionally, for each day of hearing
held before a single arbitrator, an administrative fee of \$150 shall be
payable by each party. For each day of hearing held before a multi-
arbitrator panel, an administrative fee of \$250 is payable by each party.
29. Rule R-50 of the *Wireless Rules*, entitled "Neutral Arbitrator's
Compensation" states, "Arbitrators shall charge a rate consistent with
the arbitrator's stated rate of compensation, beginning with the first day
of hearings. Each individual arbitrator establishes his or her own rate of
compensation. A random sampling of 125 arbitrators on the

Commercial Panel in Washington State (which would include the arbitrators who would hear cases pursuant to the *Wireless Rules*) provides the following compensation information: (a) Arbitrator compensation ranges from \$700 to \$2,550 per day; (b) The average (mean) daily rate of arbitrator compensation is \$1,573; (c) The median daily rate of arbitrator compensation is \$1,587.50. There is no specific rule that governs when arbitrator compensation is due, but generally, pursuant to Rule R-51, anticipated arbitrator compensation is due prior to the first evidentiary hearing, with any unexpended balance being returned to the parties at the end of the case.

30. The AAA has no authority to change, modify or waive arbitrator compensation.
31. Rule R-48 of the *Wireless Rules*, entitled "Expenses" states "Each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and the cost of any proof produced at the direct request of the arbitrator, may be the subject of an award, and shall be borne equally by the parties pending an award."

Class Relief

32. My review of the Complaint indicates that plaintiffs seek relief on behalf of a class. Were this matter to be filed with the AAA, and should relief be sought on a class basis under either the Initial Arbitration Agreement or the Revised Clause, the *American Arbitration Association Policy on Class Arbitration* would be implicated. See Exhibit G. Under the *American Arbitration Association Policy on Class Arbitration*, the AAA does not currently accept for administration demands for class action where the underlying agreement prohibits class claims, consolidation or joinder, unless an order of the court directs the parties to the underlying dispute to submit their dispute to an arbitrator or to the AAA. However, if so directed by an order of the court, the AAA would administer the case under the AAA's *Supplementary Rules for Class Arbitrations*, (hereinafter *Class Rules*) and not the *Consumer Rules*. A copy of the *Class Rules* is attached hereto as Exhibit H.
33. Under the *Class Rules*, the arbitrator or arbitrators will determine as a threshold matter, in a reasoned partial final award on the construction of the arbitration award, whether the arbitration clause permits the arbitration to proceed on behalf of or against a class (*Clause Construction Award*). A preliminary filing fee of \$3,250 is payable in full by a party making a demand for treatment of a claim as a class action.

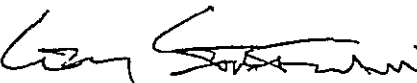
1 If the arbitrator or arbitrators determine that the arbitration shall proceed
2 beyond the *Clause Construction Award*, a supplemental filing fee shall
3 be paid by the requesting party. The supplemental filing fee shall be
4 calculated based on the amount claimed in the class arbitration and in
5 accordance with the fee schedule contained in the *Commercial Rules*.
6 It should be noted that the \$3,250 preliminary filing fee is applied
7 toward the supplemental filing fee.

8 34. As noted in the *Commercial Rules*, the administrative fee for non-
9 monetary claims "is applicable only when a claim or counterclaim is not
10 for a monetary amount. Where a monetary claim amount is not known,
11 parties will be required to state a range of claims or be subject to the
12 highest possible filing fee." For purposes of this rule, the AAA
13 considers the highest applicable filing fee for claims involving an
14 unspecified monetary amount to be \$10,000.

15 35. As a service to users of the AAA's arbitration services, the AAA
16 provides parties with optional hearing room space. A daily rate for use
17 of a hearing room is charged to the parties if they choose to conduct
18 their arbitration in an AAA office. Presently, the AAA's Seattle,
19 Washington office charges \$150 per day for a hearing room. Parties to
20 an arbitration administered by the AAA are under no obligation to have
21 their cases heard in a hearing room made available by the AAA.

22 I declare under penalty of perjury under the laws of the State of Washington that
23 the foregoing is true and correct.

24 DATED at Boston, Massachusetts on this 18th day of August, 2004.

25 

26 Gerald Strathmann