

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

APPLE COMPUTER, INC., a California
Corporation, and AT&T, INC., a Texas
Corporation,

Defendants.

Case No. 07-CV-04946

Judge Kennelly

RESPONSE OF DEFENDANT APPLE INC.
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Local Rule 33.1, Defendant Apple Inc. (hereinafter "Apple") hereby submits the following responses and objections to Plaintiff Jose Trujillo's First Set of Interrogatories ("Interrogatories" or "Interrogatory").

PRELIMINARY STATEMENT

In responding to any Interrogatory, Apple does not concede the relevancy, materiality, or admissibility of any information sought by any of the Interrogatories or any response thereto. Apple's responses are made subject to and without waiver of any questions or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence or for any other purpose, of any of the documents or information referred to or of the responses given herein, or of the subject matter thereof, in any proceeding, including the trial of this action or any other subsequent proceeding, and said responses are made specifically

sf-2461296

1

information that is protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege and/or doctrine. In responding to these Interrogatories Apple has limited the terms "You," "Your," and/or "Defendant" to mean Apple Inc. and any of its current employees, officers, or directors.

3. Apple objects generally to plaintiff's definitions of "document(s)" and "communication" on the grounds that they are overbroad, unduly burdensome, oppressive, seek information that is not in the possession, custody or control of Apple, and purport to impose obligations that exceed those set forth in the Federal Rules of Civil Procedure.

4. Apple objects generally to plaintiff's definition of "persons" on the grounds that it is overbroad, unduly burdensome, oppressive, and seeks information not in the possession, custody or control of Apple. Apple further objects to plaintiff's definition of "persons" to the extent that it purports to seek information that is protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory, or common-law privilege and/or doctrine.

5. Apple objects generally to plaintiff's definitions of "identify" and "identification" on the grounds that they are overbroad, unduly burdensome, oppressive, and seek information not in the possession, custody or control of Apple. Apple further objects to plaintiff's definitions of "identify" and "identification" to the extent that they purport to seek information that is protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory, or common-law privilege and/or doctrine. Apple further objects to plaintiff's definition of "identify" and "identification" on the grounds that they add nine additional discrete subparts to every Interrogatory requesting the identification of persons and ten additional discrete subparts to every Interrogatory requesting

sf-2461296

3

subject to the right to object to any proceeding involving or relating to the subject matter of the Interrogatories responded to herein.

Apple is responding to the Interrogatories, and each Interrogatory therein, as Apple interprets and understands the Interrogatories with respect to the issues framed in connection with this litigation. Apple has not completed its investigation of the facts related to this case, and these responses are based only on information presently known to Apple. Therefore, these responses are given without prejudice to Apple's right to supplement, amend, or modify these responses or to argue evidence at trial on these issues.

Responses to Interrogatories that seek confidential, proprietary, commercially sensitive, or trade secret information will only be made subject to the entry of an appropriate protective order governing the use and disclosure of such proprietary, commercially sensitive or confidential information.

Subject to the foregoing conditions, Apple objects and responds to the Interrogatories as follows:

OBJECTIONS TO PLAINTIFF'S DEFINITIONS AND INSTRUCTIONS

The following objections apply to each Interrogatory and are incorporated by reference into each specific response set forth below.

1. Apple objects to each definition and instruction to the extent it seeks to impose obligations beyond those required or permitted by the Federal Rules of Civil Procedure, the Local Rules of the Northern District of Illinois, or other any other applicable rules.

2. Apple objects generally to plaintiff's definition of "You," "Your," and "Defendant" on the ground that it is overbroad, unduly burdensome, oppressive and seeks information not in Apple's possession, custody or control. Apple objects generally to plaintiff's definition of "You," "Your," and "Defendant" to the extent that it purports to seek

sf-2461296

2

the identification of documents and thereby exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

6. Apple objects generally to plaintiff's definition of "relates" on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and fails to describe the information sought with reasonable particularity.

7. Apple objects to plaintiff's first instruction on the grounds that it is overbroad, unduly burdensome, and seeks information that is not in the possession, custody or control of Apple. Apple further objects to plaintiff's first instruction to the extent that it purports to require the production of information that is protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory, or common-law privilege and/or doctrine. Apple further objects to plaintiff's first instruction to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple further objects to plaintiff's first instruction to the extent that it purports to impose obligations on Apple that exceed those required by Federal Rules of Civil Procedure 26 and 33. Apple further objects to plaintiff's first instruction on the grounds that it purports to include additional discrete subparts to every Interrogatory requesting the identification of persons and thereby violates the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

8. Apple objects to plaintiff's second instruction on the grounds that it is overbroad, unduly burdensome, and seeks information that is not in the possession, custody or control of Apple. Apple further objects to plaintiff's second instruction to the extent that it purports to require the production of information that is protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory, or

sf-2461296

4

common-law privilege and/or doctrine. Apple further objects to plaintiff's second instruction to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple objects to plaintiff's second instruction to the extent that it purports to impose obligations on Apple that exceed those required by Federal Rules of Civil Procedure 26 and 33. Apple further objects to plaintiff's second instruction on the grounds that it purports to include additional discrete subparts to every Interrogatory requesting any "description" and thereby violates the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

9. Apple objects to plaintiff's third instruction to the extent that it purports to impose obligations on Apple that exceed those required by Federal Rules of Civil Procedure 26 and 33. Apple further objects to plaintiff's third instruction to the extent that it purports to require the production of information that is protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory, or common-law privilege and/or doctrine.

10. Apple objects to plaintiff's fourth instruction to the extent that it purports to impose obligations on Apple that exceed those required by Federal Rules of Civil Procedure 26 and 33. Apple further objects to plaintiff's fourth instruction to the extent that it purports to require the production of information that is protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory, or common-law privilege and/or doctrine.

11. Apple objects to plaintiff's fifth instruction to the extent that it is inconsistent with the requirements of Local Rule 33.1.

sf-2461296

5

4. Apple objects to the Interrogatories to the extent that they seek information protected by common law, constitutional, and/or statutory rights of privacy.

5. Apple objects to the Interrogatories to the extent that they seek information that is not relevant to the resolution of the pending motion for summary judgment nor to claims and defenses in the action.

6. Apple objects to the Interrogatories to the extent that they are premature in light of the procedural posture of the litigation.

7. Apple objects to the Interrogatories to the extent that they are overbroad, unduly burdensome, and oppressive.

8. Apple objects to the Interrogatories to the extent that they seek information not in the possession, custody, or control of Apple.

9. Apple objects to the Interrogatories to the extent that they seek information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff.

10. Apple objects to the Interrogatories to the extent that they are vague and ambiguous as to time.

11. Apple objects to the Interrogatories to the extent they exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33 in that they contain excessive discrete subparts.

12. Apple states these objections without waiving or intending to waive: (a) all objections to competency, relevancy, materiality, privilege, and admissibility as evidence or for any purpose of the responses to these Interrogatories, or subject matter thereof, in any subsequent proceeding in, or the trial of, this or any other action; (b) the right to object on any

sf-2461296

7

GENERAL OBJECTIONS

The following general objections apply to each Interrogatory and, accordingly, Apple incorporates each of them into the specific responses set forth below. The assertion of the same, similar, or additional objections or the provision of responses to any specific Interrogatory does not waive any of Apple's general objections stated herein and incorporated by reference:

1. Apple objects to the Interrogatories to the extent that they seek information protected by the attorney-client privilege, the attorney work product doctrine, or any other available evidentiary privilege or protection. Nothing contained herein is intended to be or should be construed as a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. Privileged information and work product are not provided in these responses, and inadvertent disclosure is not a waiver of any privilege or of the work product protection. Apple therefore construes each Interrogatory to exclude requests for privileged information of any sort.

2. Apple objects to the Interrogatories to the extent they seek to impose obligations or requirements on Apple which are greater than, inconsistent with, or different from those imposed by the Federal Rules of Civil Procedure, the Local Rules of the Northern District of Illinois or any other applicable rules.

3. Apple objects to the Interrogatories on the ground that they seek trade secret material, including, but not limited to, sensitive business or financial information, or confidential research, development, or commercial information. Such information will only be disclosed subject to the entry of an appropriate protective order governing the use and disclosure of proprietary, commercially sensitive or confidential information.

sf-2461296

6

ground to the use of said responses or the subject matter thereof, in any subsequent proceeding in, or the trial of, this or any other action; (c) the right to object on any ground at any time to a demand for further responses to these or any other discovery procedures involving or related to the subject matter of the Interrogatories directed to Apple; and (d) the right to object on any ground as to any other or future discovery requests.

Subject to the foregoing Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections, Apple responds as follows:

OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1:

State the full name, job title, current address, date of birth, and social security number of all individuals who assisted in answering these interrogatories.

RESPONSE TO INTERROGATORY NO. 1:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Apple further objects to this Interrogatory to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy.

Subject to and without waiving the foregoing objections, Apple responds as follows: Penelope Preovolos, Andrew Muhlbach and Johanna Roberts, Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105, with the assistance of Apple's in-house counsel as well as the following employees: Douglas Vincent (Senior Manager for Interactive Infrastructure), Peggy Jensen (Worldwide Packaging Manager), Carol Jinks (Production

sf-2461296

8

Lead, AppleCare Knowledge Management Group) and Lance Kunnath (AppleCare Online Support Manager), Apple Inc., 1 Infinite Loop, Cupertino, CA 95014.

INTERROGATORY NO. 2:

State the date and time that Defendant posted the terms of its battery replacement program, including the price of same, to its website at www.apple.com or any of its sub-pages, and identify the person responsible for posting said information and the address of the web-page to which it was posted.

RESPONSE TO INTERROGATORY NO. 2:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case because it is not limited to information relating to the iPhone out-of-warranty battery replacement program. Apple further objects to this Interrogatory to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: The terms of the iPhone out-of-warranty battery replacement program, including the price, were posted to the webpage www.apple.com/batteries/replacements.html on June 29, 2007, at 6:00 pm by the Interactive Infrastructure Group. The terms of the iPhone out-of-warranty battery replacement program, including the price, were posted to the webpages

sf-2461296

9

battery "may need to be replaced." In addition, Apple provided iPhones to members of the press in advance of the product's introduction and their independent reviews of the iPhone appeared in major newspapers on June 27, 2007, two days before the iPhone went on sale. These published reviews noted that the iPhone battery was not user-replaceable and that there would be a fee for replacement. David Pogue stated in his June 27, 2007, review in the *New York Times*, "Eventually, you'll have to send the phone to Apple for battery replacement, much as you do now with an iPod, for a fee." Walter Mossberg stated in his June 27, 2007, review in the *Wall Street Journal*, "Like the iPod, but unlike most cellphones, the iPhone lacks a removable battery." Edward Baig stated in his June 27, 2007, review in *USA Today*, iPhone "doesn't have a removable battery. . . . You'd have to send the device to Apple or presumably a third party to swap a spent battery."

INTERROGATORY NO. 4:

On what date did the cost of Apple's battery replacement program first appear on www.apple.com or any of its sub-pages? Please identify the web-page upon which it appeared, if any, and identify the individual who made such posting.

RESPONSE TO INTERROGATORY NO. 4:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case because it is not limited to information relating to the iPhone out-of-warranty battery replacement program. Apple further objects to this Interrogatory to the extent that it seeks information protected by

sf-2461296

11

www.apple.com/support/iphone/service/battery and

www.apple.com/support/iphone/service/faq on June 29, 2007, by 4:00 pm by AppleCare.

INTERROGATORY NO. 3:

Identify any and all marketing and promotional materials, press releases, product packaging, manuals, product guides, web pages, specification sheets, documents or otherwise in which, prior to June 29, 2007, Apple disclosed to the public the terms and costs of its battery replacement. For each such document, identify its date of release, the mode of release (mail, email, fax, online, etc.) to whom it was released, and by whom it was drafted.

RESPONSE TO INTERROGATORY NO. 3:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case because it is not limited to information relating to the iPhone out-of-warranty battery replacement program. Apple further objects to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: As early as January 9, 2007, Apple posted technical specifications for the iPhone on its website at www.apple.com/iphone/technology/specs.html that made clear that the iPhone

sf-2461296

10

common law, constitutional, and/or statutory rights of privacy. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: The cost of the iPhone out-of-warranty battery replacement program was posted by Apple to multiple Apple webpages on June 29, 2007: www.apple.com/batteries/replacements.html; www.apple.com/support/iphone/service/battery; and www.apple.com/support/iphone/service/faq.

INTERROGATORY NO. 5:

On what date did Apple decide upon the terms of its battery replacement program, including the price?

RESPONSE TO INTERROGATORY NO. 5:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case because it is not limited to information relating to the iPhone out-of-warranty battery replacement program. Apple further objects to this Interrogatory on the grounds that it is vague and ambiguous in its use of the word "terms". Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33. Apple further objects to this

sf-2461296

12

Interrogatory on the grounds that it is unduly burdensome and duplicative of Request for Admission No. 27.

Subject to and without waiving the foregoing objections, Apple responds as follows: The price of the iPhone out-of-warranty battery replacement program was decided prior to the iPhone's launch on June 29, 2007.

INTERROGATORY NO. 6:

Did Apple receive any inquiry prior to its release of the iPhone regarding the iPhone battery replacement program, iPhone battery replacement, and/or the cost of iPhone battery replacement from any consumer, member of the media, regulatory agency, investigative body, consumer advocacy group, or any entity, organization, or individual of any sort by any means of communication? If yes, identify the date and form of each such inquiry, to whom it was addressed, from whom it was received, and how Apple responded to each such inquiry.

RESPONSE TO INTERROGATORY NO. 6:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple objects to the Interrogatories to the extent that they seek information protected by the attorney-client privilege, the attorney work product doctrine, or any other available evidentiary privilege or protection. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to this Interrogatory to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple further objects to this Interrogatory on the grounds that its overbroad, vague and ambiguous in its use of the term

sf-2461296

13

were posted to the webpage www.apple.com/batteries/replacements.html on June 29, 2007, at 6:00 pm.

INTERROGATORY NO. 8:

On what date, and at what time, did Apple post the terms of its battery replacement program, including cost, on its website at: www.apple.com/support/iphone/service/battery?

RESPONSE TO INTERROGATORY NO. 8:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case because it is not limited to information relating to the iPhone out-of-warranty battery replacement program. Apple further objects to this Interrogatory on the grounds that it is duplicative of other Interrogatories propounded by plaintiff.

Subject to and without waiving the foregoing objections, Apple responds as follows: The terms of the iPhone out-of-warranty battery replacement program, including the price, were posted to the webpage www.apple.com/support/iphone/service/battery on June 29, 2007, before 4:00 pm.

INTERROGATORY NO. 9:

Describe, in detail, the process as of June 29, 2007 for updating information on the Apple website, including the process for approving all updates, and the time delay between updating the website and such updates being accessible to the public.

sf-2461296

15

"any entity, organization or individual of any sort." Apple further objects to this Interrogatory on the grounds that it is unduly burdensome, compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: After a reasonable inquiry, Apple states that it has no record of media inquiries or inquiries from a regulatory agency, investigative body or consumer advocacy group related to the iPhone out-of-warranty battery replacement program received prior to the release of the iPhone.

INTERROGATORY NO. 7:

On what date, and at what time, did Apple post the terms of its battery replacement program, including cost, on its website at: www.apple.com/batteries/replacements.html?

RESPONSE TO INTERROGATORY NO. 7:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case because it is not limited to information relating to the iPhone out-of-warranty battery replacement program. Apple further objects to this Interrogatory on the grounds that it is duplicative of other Interrogatories propounded by plaintiff.

Subject to and without waiving the foregoing objections, Apple responds as follows: The terms of the iPhone out-of-warranty battery replacement program, including the price,

sf-2461296

14

RESPONSE TO INTERROGATORY NO. 9:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case because it is not limited to information relating to the iPhone out-of-warranty battery replacement program. Apple further objects to this Interrogatory to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple further objects to this Interrogatory on the grounds that it is vague and ambiguous in its use of the term "in detail." Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: The process as of June 29, 2007, for updating pages related to the iPhone battery on the Apple website was as follows: the process was initiated for uploading the webpages and confirmation was made that they were uploaded.

INTERROGATORY NO. 10:

Please identify all marketing and promotional materials, press releases, product packaging, manuals, product guides, web pages, specification sheets, documents, or otherwise, to which consumers had access that directed them to visit the specific webpages

sf-2461296

16

located at www.apple.com/batteries/replacements.html and/or www.apple.com/support/iphone/service/battery prior to, on, or following June 29, 2007. For each such document, identify its date of release, the mode of release (mail, email, fax, online, etc.) to whom it was released, and by whom it was drafted.

RESPONSE TO INTERROGATORY NO. 10:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: From the date of the iPhone launch on June 29, 2007, to the present, Apple has disclosed the terms and price of the iPhone out-of-warranty battery replacement program in numerous ways. For example, the following materials direct consumers to www.apple.com/batteries for information regarding the iPhone battery:

1. the feature label on each and every iPhone box;
2. the Important Product Information Guide included in each and every iPhone box and posted on Apple's website;

sf-2461296

17

INTERROGATORY NO. 12:

Does Apple charge a 10% restocking fee on iPhones returned within 14 days after purchase if the iPhone was removed from its packaging? If no, please explain Apple's return/exchange policy regarding the iPhone.

RESPONSE TO INTERROGATORY NO. 12:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: A customer who has purchased an iPhone from an Apple retail store may return it to any Apple retail store within 14 days for a refund of the original purchase price, so long as the iPhone is unopened in its original packaging. If a customer who has opened the iPhone box wishes to return the iPhone to an Apple retail store (an "open-box" return), he may do so within 14 days after purchase if the product is still in new condition. Depending on the reason for return, Apple may refund the original purchase price less a 10-percent restocking fee for open-box returns. However, there are several circumstances in which a customer may return an open-box iPhone to the Apple retail store without being assessed a restocking fee. A customer may return an iPhone within thirty (30) days without being charged a restocking fee if the customer indicates that he or she does not agree with AT&T's terms and conditions of service, is unable to qualify for a service contract with AT&T, or is unable to get acceptable cellular reception in their primary areas of use. A customer may also return an iPhone within

sf-2461296

19

3. the iPhone User Guide posted on Apple's website;
4. the iPhone technical specifications located at www.apple.com/iphone/specs.html.

There is a direct link from Apple's general battery information page, www.apple.com/batteries, to www.apple.com/batteries/replacements.html. There is a direct link from www.apple.com/batteries/replacements.html to www.apple.com/support/iphone/service/battery.

INTERROGATORY NO. 11:

State whether or not it is possible for a consumer to activate an iPhone with AT&T Mobility, LLC, without removing the iPhone from its packaging/box? If yes, state the process for doing same.

RESPONSE TO INTERROGATORY NO. 11:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case.

Subject to and without waiving the foregoing objections, Apple responds as follows: In order to activate an iPhone, the iPhone must be connected to a computer.

sf-2461296

18

thirty (30) days without being charged a restocking fee if the customer indicates that he or she does not agree to the terms of Apple's product warranty.

INTERROGATORY NO. 13:

What studies has Apple conducted regarding the lifespan and/or durability of its iPhone battery? For each such study, please identify the individual that conducted the study, when the study was commenced / completed, and the results of each study.

RESPONSE TO REQUEST FOR INTERROGATORY NO. 13:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple objects to this Interrogatory on the grounds that it fails to describe the information sought with reasonable particularity. Apple further objects to this Interrogatory on the grounds that it is vague and ambiguous as to time and in its use of the terms "studies," "durability" and "lifespan." Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to this Interrogatory to the extent that it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: Apple's component suppliers test the cycle life of batteries used in the iPhone. In addition, Apple tested the batteries before the iPhone was launched and confirmed that the batteries met specification.

sf-2461296

20

INTERROGATORY NO. 14:

Does the battery enclosed in the iPhone have a shelf-life or expiration date? If yes, state the general expiration date and/or final shelf-life date of those batteries enclosed in the initial iPhones offered to the public on or about June 29, 2007.

RESPONSE TO INTERROGATORY NO. 14:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is vague and ambiguous as to time and in its use of the terms "shelf-life" and "expiration date". Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: Apple states that there is no expiration date associated with iPhone batteries in use.

INTERROGATORY NO. 15:

Apple claims in its Motion for Summary Judgment that it posted the cost of its battery replacement program to its website on June 29, 2007. Assuming arguendo, and without admitting same, why did Apple wait until June 29, 2007, the date the iPhone went on sale, to disclose the cost of its battery replacement program?

doctrine. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, vague and ambiguous in its use of the phrases "other terms . . . or information of any sort."

Subject to and without waiving the foregoing objections, Apple responds as follows: Prior to the iPhone launch, Apple had released technical specifications and several press releases regarding the iPhone, and the product was demonstrated at the MacWorld Convention on January 9, 2007. In addition, Apple had posted several introductory video tours of the iPhone on its website before launch. Other detailed information, including information regarding features, support details and how to obtain service for the iPhone, was released on June 29, 2007, the day the product went on sale.

INTERROGATORY NO. 17:

Did Apple receive any complaint after its release of the iPhone regarding the iPhone battery replacement program, iPhone battery replacement, and/or the cost of iPhone battery replacement from any consumer, member of the media, regulatory agency, investigative body, consumer advocacy group, consumer rights groups, or any entity, organization, or individual of any sort by any means of communication? If yes, identify the date and form of each such inquiry, to whom it was addressed, from whom it was received, and how Apple responded to each such inquiry.

RESPONSE TO INTERROGATORY NO. 15:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case.

Subject to and without waiving the foregoing objections, Apple responds as follows: Along with other detailed product information, the cost of the iPhone out-of-warranty battery replacement program was posted on June 29, 2007, because that is the day the iPhone was first offered for sale to the public.

INTERROGATORY NO. 16:

Apple claims in its Motion for Summary Judgment that it posted the cost of its battery replacement program to its website on June 29, 2007. Assuming arguendo, and without admitting same, what other terms, specifications, costs, details, or information of any sort pertaining to the iPhone was released to the public and/or posted to Apple's website on or after June 29, 2007?

RESPONSE TO INTERROGATORY NO. 16:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product

RESPONSE TO INTERROGATORY NO. 17

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory to the extent that it calls for information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Apple further objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. To the limited extent that this Interrogatory may be relevant to class issues, such discovery is unduly burdensome at this stage of the litigation and should be deferred pending resolution of Apple's summary judgment motion. Apple further objects to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory to the extent it seeks information protected by common law, constitutional, and/or statutory rights of privacy. Apple further objects to this Interrogatory to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory on the grounds that it is overbroad, vague and ambiguous as to time and in its use of the phrase "any entity, organization, or individual of any sort." Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: After a reasonable inquiry for inquiries from media, regulatory or investigative bodies and

consumer advocacy groups, Apple states that it received a letter from Mindy Bockstein, the Executive Director of the New York Consumer Protection Board on July 30, 2007, requesting that Apple redesign its iPhone battery to be replaceable by a consumer. Apple responded by letter.

INTERROGATORY NO. 18:

Other than via its website, how does Apple claim to have disclosed the terms and cost of the iPhone battery replacement program on or prior to June 29, 2007?

RESPONSE TO INTERROGATORY NO. 18:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to the extent that it seeks information to which plaintiff has equal access and/or which is already in the possession, custody, or control of plaintiff. Apple further objects to this Interrogatory on the grounds that it is unduly burdensome, oppressive and duplicative of other Interrogatories and discovery requests made by plaintiff.

Subject to and without waiving the foregoing objections, Apple responds as follows: Apple disclosed the terms and price of the iPhone out-of-warranty battery replacement program in numerous ways. For example, the feature label on the outside of each and every iPhone box as well as the in-box materials and the iPhone User's Guide state that the battery may need to be replaced by an Apple service provider and refer consumers to www.apple.com/batteries for further information. The specific cost information for the

sf-2461296

25

Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

INTERROGATORY NO. 20:

How many drafts of the web pages located at www.apple.com/batteries/replacements.html and www.apple.com/support/iphone/service/battery did Defendant design prior to posting same? For each such draft, indicate the date that the draft was presented for review and date that it was rejected/accepted.

RESPONSE TO INTERROGATORY NO. 20:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory to the extent that it calls for or would otherwise require the production of documents or information protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Apple further objects to this Request on the grounds that it is overbroad, unduly burdensome and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to this Interrogatory on the grounds that it is compound and contains discrete subparts which exceed the allowable number of Interrogatories pursuant to Federal Rule of Civil Procedure 33.

Subject to and without waiving the foregoing objections, Apple responds as follows: After a reasonable inquiry, Apple does not have drafts of www.apple.com/batteries/replacements.html and www.apple.com/support/iphone/service/battery.

sf-2461296

27

iPhone out-of-warranty battery replacement program — \$79, plus \$6.95 shipping and handling — was directly accessible from this webpage as of June 29, 2007. In addition, Apple provided iPhones to members of the press in advance of the product's introduction and their independent reviews of the iPhone appeared in major newspapers on June 27, 2007, two days before the iPhone went on sale. These published reviews noted that the iPhone battery was not user-replaceable and that there would be a fee for replacement. David Pogue stated in his June 27, 2007, review in the *New York Times*, "Eventually, you'll have to send the phone to Apple for battery replacement, much as you do now with an iPod, for a fee." Walter Mossberg stated in his June 27, 2007, review in the *Wall Street Journal*, "Like the iPod, but unlike most cellphones, the iPhone lacks a removable battery." Edward Baig stated in his June 27, 2007, review in *USA Today*, iPhone "doesn't have a removable battery. . . . You'd have to send the device to Apple or presumably a third party to swap a spent battery."

INTERROGATORY NO. 19:

Does Apple receive a financial benefit and/or monies from AT&T Mobility, LLC, for iPhones activated with AT&T Mobility, LLC for cellular service? If yes, please state the basis for calculating said benefit and/or monies (i.e., dollars per phone activated, percentage of each monthly iPhone cellular phone bill, etc.).

RESPONSE TO INTERROGATORY NO. 19:

Apple refers to and incorporates by reference its Preliminary Statement, Objections to Plaintiff's Definitions and Instructions, and General Objections as though set forth in full herein. Apple further objects to this Interrogatory on the grounds that it is overbroad and does not seek the discovery of information relevant to the resolution of Apple's pending summary judgment motion nor to the claims and defenses in this case. Apple further objects to this

sf-2461296

26

Dated: March 21, 2008

Respectfully submitted,

APPLE INC.

By: Johanna Roberts /mm
One of Its Attorneys

Patrick T. Stanton (#6216899)
Edward S. Weil (#6194191)
Schwartz Cooper Chartered
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
(312)346-1300

and
Penelope A. Prevolos (admitted *pro hac vice*)
Andrew D. Muhlbach
Johanna W. Roberts (admitted *pro hac vice*)
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
(415) 268-7000

sf-2461296

28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

APPLE COMPUTER, INC., a California
corporation and AT&T, Inc., a Texas corporation,

Defendants.

CASE NO.: 07-CV-04946


Judge Kennelly

Archis A. Parasharami (Counsel for AT&T)
Evan M. Tager
Kevin S. Ranlett
Mayer Brown LLP
1919 K Street, NW
Washington, DC 20006

Sarah Eileen Reynolds (Counsel for AT&T)
Victoria R. Collado
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 27, 2008.



CERTIFICATE OF SERVICE

I, Marci Marcantonio, certify and declare as follows:

I am over the age of 18 years and not a party to this action.

My business address is Morrison & Foerster LLP, 425 Market Street, San Francisco,
California 94105, which is located in the city, county and state where the mailing described
below took place.

On March 27, 2008, I caused to be served a copy of the following documents:

**RESPONSE OF DEFENDANT APPLE INC.
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

on the following individuals, by United States Postal Service, First Class Mail:

James R. Rowe (Counsel for Plaintiff)
Larry Daniel Drury
Larry D. Drury, Ltd.
205 West Randolph
Suite 1430
Chicago, IL 60606