

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, )		
	)	No. 07 CV 04946
vs. )		
	)	Judge Kennelly
APPLE COMPUTER, INC., a California )		Mag. Judge Ashman
corporation and AT&T, Inc., a Texas )		
corporation, )		
	)	
Defendants. )		

PLAINTIFF'S RESPONSE TO DEFENDANT APPLE INC.'S AFFIRMATIVE DEFENSES

Now comes Plaintiff, JOSE TRUJILLO, individually and on behalf of all others similarly situated, by and through his attorneys, LARRY D. DRURY, LTD., and in response to Defendant APPLE, INC.'S Affirmative Defenses states as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to Notify or Breach of Warranty)

1. As to those causes of action based upon a breach of warranty, plaintiff failed to notify Apple of any breach of warranty within a reasonable time after plaintiff knew or should have known of any purported breach.

RESPONSE: Plaintiff denies the allegations contained in Defendant, Apple's First Affirmative Defense.

SECOND AFFIRMATIVE DEFENSE

2. The Complaint, and each of its purported causes of action, is barred, in whole or in part, by the doctrine of waiver.

RESPONSE: Plaintiff denies the allegations contained in Defendant, Apple's Second Affirmative Defense.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

3. The Complaint, and each of its purported causes of action, is barred, in whole or in part, by the equitable doctrine of estoppel.

RESPONSE: Plaintiff denies the allegations contained Defendant, Apple's Third Affirmative Defense.

FOURTH AFFIRMATIVE DEFENSE

(Equitable Relief - Remedies)

4. Plaintiff and the purported class are barred from asserting the claims for equitable relief alleged in the complaint because they have adequate remedies at law and/or the equitable relief is neither necessary nor proper under applicable law.

RESPONSE: Plaintiff denies the allegations contained in Defendant, Apple's Fourth Affirmative Defense.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

5. Plaintiff and the purported class have failed to mitigate their damages, if any.

RESPONSE: Plaintiff denies the allegations contained in Defendant, Apple's Fifth Affirmative Defense.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Article III Standing)

6. Apple alleges on information and belief that plaintiff and the members of the purported class lack standing under Article III of the Constitution of the United States.

RESPONSE: Plaintiff denies the allegations contained in Defendant, Apple's Sixth Affirmative

Defense.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim - All Causes of Action)

7. The Complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause, or causes of action against Apple.

RESPONSE: Plaintiff denies the allegations contained in Defendant, Apple's Seventh

Affirmative Defense.

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

By:  \_\_\_\_\_

Larry D. Drury  
Larry D. Drury, Ltd.  
205 West Randolph  
Suite 1430  
Chicago, Illinois 60606  
312/346-7950  
Atty. No. 0681024