

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

<p>JOSE TRUJILLO, individually and on behalf of all others similarly situated,</p> <p style="text-align:center">Plaintiff,</p> <p>vs.</p> <p>APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation,</p> <p style="text-align:center">Defendants.</p>	<p>Case No. 1:07-cv-04946</p> <p>Judge Kennelly Mag. Judge Ashman</p>
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**MOTION OF DEFENDANT AT&T MOBILITY LLC
TO COMPEL ARBITRATION AND DISMISS ACTION**

Pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1–16 and Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendant AT&T Mobility LLC (“ATTM”) respectfully moves this Court for an order (i) compelling Plaintiff Jose Trujillo to pursue his dispute with ATTM in arbitration or small claims court and (ii) dismissing all claims against ATTM.¹ This Motion is based upon this Motion, the attached Memorandum of Points and Authorities, and the Declarations of Neal S. Berinhout, Richard Nagareda, and Kevin Ranlett, and all exhibits thereto. In support of this motion, ATTM states as follows:

1. On July 26, 2007, plaintiff Jose Trujillo filed a putative class-action complaint against AT&T, Inc. and Apple Computer, Inc. (“Apple”) in the Chancery Division of the County Department of the Circuit Court of Cook County, alleging that the manner in which the

¹ As explained in ATTM’s memorandum of law in support of this motion (at 5), the undersigned counsel for ATTM certifies that ATTM complied with its obligation under Local Rule 37.2 to meet and confer by sending a letter to Larry D. Drury, counsel for plaintiff. Mr. Drury was not willing to agree to the relief sought in this motion.

defendants marketed the iPhone violates the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1 *et seq.* He also raises a variety of common-law claims.

2. On August 31, 2007, Apple timely filed a Notice of Removal to this Court.

3. On September 6, 2007, the plaintiff filed an Amended Complaint substituting ATTM as a defendant for AT&T, Inc.

4. In the course of activating his iPhone for wireless service from ATTM, the plaintiff agreed to a contractual provision that states that “[ATTM] and you agree to arbitrate **all disputes and claims between us**” or to pursue such disputes in small claims court. Declaration of Neal S. Berinhout Ex. 3, at 12 (emphasis in original). The provision specifies that arbitration must be conducted on an individual rather than class-wide basis. *Id.* Ex. 3, at 12, 15.

5. The Federal Arbitration Act (“FAA”) provides that written agreements to arbitrate disputes “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA governs the enforceability of the arbitration agreement between the plaintiff and ATTM. *See id.*

6. Because the plaintiff’s arbitration agreement covers all of his claims against ATTM, the Court should compel him to pursue his claims in arbitration or small claims court. *Id.* § 4.

7. When, as here, all of the claims against a defendant subject to a binding arbitration agreement that the defendant has invoked, the Court should dismiss them. *See Deputy v. Lehman Bros., Inc.*, 374 F. Supp. 2d 695, 711 (E.D. Wis. 2005) (“A court may dismiss a case if all of the issues raised before it are arbitrable.”); *accord, e.g., Choice Hotels Int’l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709 (4th Cir. 2001) (“[D]ismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable.”); *Alford v. Dean Witter Reynolds, Inc.*, 975

F.2d 1161, 1164 (5th Cir. 1992) (“The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration.”).

WHEREFORE, ATTM respectfully request that this Court compel arbitration pursuant to 9 U.S.C. § 4 and dismiss all claims against ATTM pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

Dated: October 16, 2007

Respectfully submitted,

/s Sarah E. Reynolds

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CERTIFICATE OF SERVICE

I, Sarah E. Reynolds, an attorney, hereby certify that a true and correct copy of Motion of Defendant AT&T Mobility LLC to Compel Arbitration and Dismiss Action was served on the following counsel of record via electronic delivery on October 16, 2007:

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Dated: October 16, 2007