

**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 MOBILITY LLC, a
Georgia corporation,

Defendants.

CASE NO.: 07-CV-04946

Judge Kennelly

DEFENDANT APPLE INC.'S MOTION FOR SUMMARY JUDGMENT

Defendant Apple Inc. ("Apple"), by counsel and pursuant to Federal Rule of Civil Procedure 56(c), hereby respectfully moves this Court for the entry of summary judgment in its favor as to each of the six claims for relief alleged in Plaintiff Jose Trujillo's Complaint ("Complaint").

This Motion is made on the ground that there is no genuine issue as to any material fact and that Apple is entitled to judgment as a matter of law because each of the claims for relief alleged in the Complaint has no merit. Apple disclosed the allegedly concealed facts that are the basis of the Complaint. Apple's comprehensive disclosures preclude any finding of a deceptive act, intent, or proximate causation as required by the Illinois Consumer Fraud Act, as well as any finding of concealment, intent, reliance or causation for common-law fraudulent concealment. Plaintiff also cannot establish any actual damages for these claims.

Plaintiff's claims for breach of implied warranties and breach of contract based on the allegedly concealed facts also fail. Plaintiff did not provide the requisite notice for any warranty claim. Nor can plaintiff establish that his iPhone was unmerchantable, that it was not fit for a particular purpose, that any contract term was breached, or that he suffered any actual damages.

Summary judgment is also proper as to plaintiff's claims for unjust enrichment and an accounting because plaintiff cannot establish any basis for these equitable remedies.

For all of these reasons, Apple is entitled to summary judgment as a matter of law.

This Motion is based on Apple's concurrently-filed Memorandum of Points and Authorities, Rule 56.1 Statement of Undisputed Material Facts, the Declarations of Peggy Jensen, Carol Jinks, Douglas Vincent, Lance Kunnuth and Arin Knuth, and on such further evidence and argument as may be presented to the Court at or before the hearing on the Motion.

Dated: December 7, 2007

Respectfully submitted,

APPLE INC.

By: /s/Patrick T. Stanton

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