

**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 RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1(a), Defendant Apple Inc. ("Apple") submits the following
Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

Parties, Jurisdiction, and Venue

1. Plaintiff Jose Trujillo ("Plaintiff") is an individual who resides in Melrose Park,
Illinois. (Compl. ¶ 1.)
2. Defendant Apple Inc. (f/k/a Apple Computer, Inc.) is a California corporation
with its corporate headquarters located in Cupertino, California. (Compl. ¶ 2; Defendant's
Answer to Plaintiff's Complaint ("Answer") ¶ 2.)
3. Subject matter jurisdiction exists over this action pursuant to diversity jurisdiction
as set forth in 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005.
(Compl. ¶ 4.)
4. Venue lies in this District, as Plaintiff alleges that he purchased his iPhone from
an Apple retail store located in OakBrook, Illinois. (Compl. ¶ 8.)

Undisputed Material Facts

A. The iPhone Launch on June 29, 2007

5. Apple began selling the iPhone on June 29, 2007. (Declaration of Douglas Vincent in Support of Apple's Motion for Summary Judgment ("Vincent Decl.") ¶ 3.)

B. The iPhone Feature Label

6. Each iPhone is sold in a box on the outside of which a feature label is affixed. (Declaration of Peggy Jensen in Support of Apple's Motion for Summary Judgment ("Jensen Decl.") ¶ 2.)

7. The feature label affixed to the iPhone box states:

Battery has limited recharge cycles and may eventually need to be replaced by Apple service provider. Battery life and charge cycles vary by use and settings. See www.apple.com/batteries.

(Jensen Decl. ¶ 3, Ex. A.)

8. The feature label for the iPhone has not changed since the product first went on sale on June 29, 2007. (Jensen Decl. ¶ 4.)

C. The iPhone In-Box Guide and User's Guide

9. Included within each iPhone box is a paper copy of the "Important Product Information Guide" for iPhone. (Jensen Decl. ¶ 5.)

10. The Important Product Information Guide for the iPhone states:

Never attempt to repair or modify iPhone yourself. iPhone does not contain any user-serviceable parts, except for the SIM card and SIM tray . . . The rechargeable battery in iPhone should be replaced only by an Apple Authorized Service Provider. For more information about batteries, go to www.apple.com/batteries.

(Jensen Decl. ¶ 5, Declaration of Carol Jinks in Support of Apple's Motion for Summary Judgment ("Jinks Decl.") ¶ 3, Ex. A.)

11. The Important Product Information Guide for iPhone has contained this language at all times since the iPhone first went on sale on June 29, 2007. (Jensen Decl. ¶ 6; Jinks Decl. ¶ 4.)

12. The Important Product Information Guide is also available online on Apple's website at <http://www.apple.com/support/manuals/iphone>. (Jinks Decl. ¶ 2.)

13. The Important Product Information Guide was uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Jinks Decl. ¶ 2.)

14. Apple created an iPhone User's Guide which can be found on Apple's website at <http://www.apple.com/support/manuals/iphone>. (Jinks Decl. ¶ 5.)

15. The iPhone User's Guide was uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Jinks Decl. ¶ 5.)

16. In "Chapter 2: Basics," under the heading "Charging the Battery" on page 27, the iPhone User's Guide states:

Rechargeable batteries have a limited number of charge cycles and may eventually need to be replaced. The iPhone battery is not user replaceable; it can only be replaced by an authorized service provider. For more information, go to: www.apple.com/batteries.

(Jinks Decl. ¶ 6, Ex. B.)

17. In "Appendix A: Safety and Handling," under the heading "Repairing iPhone" on page 112, the iPhone User's Guide states:

Never attempt to repair or modify iPhone yourself. iPhone does not contain any user-serviceable parts, except for the SIM card and SIM tray . . . The rechargeable battery in iPhone should be replaced only by an Apple Authorized Service Provider. For more information about batteries, go to www.apple.com/batteries.

(Jinks Decl. ¶ 7, Ex. B.)

18. The above-quoted text in paragraphs 16 and 17 has been included in the iPhone User's Guide at all times. (Jinks Decl. ¶ 8.)

D. Apple's Website Disclosures

19. The webpage, www.apple.com/batteries, was updated with iPhone-specific information on June 29, 2007. (Vincent Decl. ¶ 4.)

20. The webpage, www.apple.com/batteries, with the iPhone-specific updates has been accessible to the public on Apple's website from June 29, 2007 to the present. (Vincent Decl. ¶ 4.)

21. This webpage, www.apple.com/batteries, includes the following statements regarding rechargeable lithium-ion batteries:

Like other rechargeable batteries, these batteries may eventually require replacement.

You can charge all lithium-ion batteries a large but finite number of times, as defined by charge cycle.

A charge cycle means using all of the battery's power, but that doesn't necessarily mean a single charge. For instance, you could listen to your iPod for a few hours one day, using half its power, and then recharge it fully. If you did the same thing the next day, it would count as one charge cycle, not two, so you may take several days to complete a cycle. Each time you complete a charge cycle, it diminishes battery capacity slightly, but you can put notebook, iPod and iPhone batteries through many charge cycles before they will hold only 80% of original battery capacity. As with other rechargeable batteries, you may eventually need to replace your battery.

Battery Lifespan means the total amount of time your battery will last before it must be replaced.

(Vincent Decl. ¶ 5, Ex. A.)

22. The above-quoted text in paragraph 21 has been included at all times from June 29, 2007 to the present. (Vincent Decl. ¶ 6.)

23. The webpage, www.apple.com/batteries/iphone.html, was uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Vincent Decl. ¶ 10.)

24. The webpage, www.apple.com/batteries/iphone.html, provides pointers for maximizing the battery life and lifespan of the iPhone battery. It also states:

“Battery lifespan” means the total amount of time your battery will last before it must be recharged”

Charge Cycles: A properly maintained iPhone battery is designed to retain up to 80% of its original capacity at 400 full charge and discharge cycles. You may choose to replace your battery when it no longer holds sufficient charge to meet your needs.

(Vincent Decl. ¶ 11, Ex. C.)

25. The above-quoted text in paragraph 24 has been included at all times from June 29, 2007 to the present. (Vincent Decl. ¶ 12.)

26. The webpage, www.apple.com/batteries/replacements.html, provides information regarding Apple's battery replacement programs for its various products. (Vincent Decl. ¶ 7.)

27. The webpage, www.apple.com/batteries/replacements.html, was updated with iPhone-specific information on June 29, 2007. (Vincent Decl. ¶ 7.)

28. The webpage, www.apple.com/batteries/replacements.html, with the iPhone-specific updates has been accessible to the public on Apple's website from June 29, 2007 to the present. (Vincent Decl. ¶ 7.)

29. The webpage, www.apple.com/batteries/replacements.html, provides detailed information regarding Apple's battery replacement program. For the iPhone, it contains the following information:

iPhone Owners. Your one-year warranty includes replacement coverage for a defective battery. You can extend your coverage to two years from the date of your iPhone purchase with the AppleCare Protection Plan for iPhone. During the plan's coverage period, Apple will replace the battery if it drops below 50% of its original capacity. If it is out of warranty, Apple offers a battery replacement for \$79, plus \$6.95 shipping, subject to local tax.

(Vincent Decl. ¶ 8, Ex. B.)

30. The above-quoted text in paragraph 29 has been included at all times from June 29, 2007 to the present. (Vincent Decl. ¶ 9.)

31. Apple first posted technical specifications for the iPhone on its website on January 9, 2007, at www.apple.com/iphone/technology/specs.html. (Vincent Decl. ¶ 13.)

32. These technical specifications stated:

Rechargeable batteries have a limited number of charge cycles and may eventually need to be replaced. Battery life and number of charge cycles vary by use and settings. See www.apple.com/batteries for more information.

(Vincent Decl. ¶ 13, Ex. D.)

33. More detailed technical specifications for the iPhone were uploaded and accessible to the public on Apple's website at www.apple.com/iphone/specs.html from June 19, 2007 to the present. (Vincent Decl. ¶ 14.)

34. The technical specifications uploaded on June 19, 2007 replaced the technical specifications discussed in paragraph 31. (Vincent Decl. ¶ 15.)

35. The technical specifications uploaded on June 19, 2007 state:

Rechargeable batteries have a limited number of charge cycles and may eventually need to be replaced. See www.apple.com/batteries for more information.

(Vincent Decl. ¶ 14, Ex. E.)

36. The quoted content from the iPhone technical specifications uploaded on June 19, 2007 has been included at all times since that date. (Vincent Decl. ¶ 15.)

37. Support pages were uploaded to the Apple website for the iPhone on June 29, 2007. (Declaration of Lance Kunnuth in Support of Apple's Motion for Summary Judgment ("Kunnuth Decl.") ¶ 2.)

38. Both www.apple.com/support/iphone/service/battery and www.apple.com/support/iphone/service/faq were uploaded and accessible to the public on Apple's website from June 29, 2007 to the present. (Kunnuth Decl. ¶ 2.)

39. The webpage, www.apple.com/support/iphone/service/battery, contains Frequently Asked Questions (FAQ) regarding the iPhone Out-of-Warranty Battery Replacement Program, including the following information:

What is the iPhone Battery Replacement Program?

If your iPhone requires service only because the battery's ability to hold an electrical charge has diminished, Apple will repair your iPhone for a service fee of \$79, plus \$6.95 shipping. . . .

How much does it cost to participate in the program?

The program costs \$79, plus \$6.95 shipping. The program cost is \$85.95 per unit. All fees are in US dollars and subject to local tax. . . . Please review Apple's Repair Terms and Conditions for further details.

Will the data on my iPhone be preserved?

No, the repair process will clear all data from your iPhone. It is important to sync your iPhone with iTunes to back up your contacts, photos, email account settings, text messages, and more. Apple is not responsible for the loss of information while servicing your iPhone and does not offer any data transfer service. . . .

How long will service take?

The repair process normally takes three business days. See the iPhone Service FAQ for information about getting an AppleCare Service Phone for you to use with all of your data while your iPhone is being repaired.

(Kunnuth Decl. ¶ 3, Ex. A.)

40. The above-quoted text in paragraph 39 has been included at all times. (Kunnuth Decl. ¶ 4.)

41. The webpage, www.apple.com/support/iphone/service/faq, contains answers to Frequently Asked Questions (FAQ) about the iPhone repair process and the iPhone warranty, as well as about AppleCare Service Phones. (Kunnuth Decl. ¶ 5.)

42. From the time it was originally uploaded on June 29, 2007, until November 2007, this Service FAQ disclosed the availability and cost of AppleCare Service Phones as follows:

If I need to have my iPhone repaired, will I be able to borrow an iPhone to use?

Apple can provide an AppleCare Service Phone for you to use with all of your data while your iPhone is being repaired. The service fee for the AppleCare Service phone is \$29. For more details please review the iPhone Rental Terms and Conditions.

(Kunnuth Decl. ¶ 5.)

43. While the precise wording of the Service FAQ was changed in November 2007, it has at all times disclosed the availability and \$29 cost of AppleCare Service Phones for rental while a customer's unit is being repaired. (Kunnuth Decl. ¶ 6.)

E. The iPhone Warranty

44. Each iPhone comes with Apple's One-Year Limited Warranty. (Declaration of Arin Knuth in Support of Apple's Motion for Summary Judgment ("Knuth Decl.") ¶ 2, Ex. A.)

45. Apple's One-Year Limited Warranty contains the following statement:

ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THIS LIMITED WARRANTY.

(Knuth Decl., Ex. A.)

46. Under Apple's warranty policies, Apple would replace an iPhone battery if it dropped below 50% of its original capacity in the first year of purchase. (Knuth Decl. ¶ 3.)

F. Plaintiff's iPhone

47. According to Apple's customer and service records, Plaintiff Jose Trujillo purchased an iPhone on July 5, 2007. (Knuth Decl. ¶ 5.)

48. Apple has no record of any battery-related complaints or requests for repair concerning the Plaintiff's iPhone. (Knuth Decl. ¶ 5.)

Dated: December 7, 2007

Respectfully submitted,

APPLE INC.

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