

**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.

No. 07 CV 04946

Judge Kennelly
Mag. Judge Ashman

**DEFENDANT AT&T MOBILITY LLC'S MOTION FOR LEAVE TO FILE
SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION TO COMPEL
ARBITRATION AND DISMISS ACTION**

Defendant AT&T Mobility LLC ("ATTM") respectfully requests leave to submit supplemental authority in support of its motion to compel arbitration: the Illinois Appellate Court's recent decision in *Bess v. DirecTV, Inc.*, ___ N.E.2d ___, 2008 WL 740344 (Ill. App. Ct. Mar. 18, 2008) (attached as Exhibit A). In that decision ("*Bess II*"), the Illinois Appellate Court vacated its initial decision in *Bess v. DirecTV, Inc.*, 2007 WL 2013613 (Ill. App. Ct. July 10, 2007) ("*Bess I*").

In *Bess I*, the Illinois Appellate Court had affirmed the circuit court's denial of DirecTV's motion to compel arbitration, holding that the arbitration provision in DirecTV's contract with the plaintiff customer was procedurally unconscionable to such an extreme degree as to be invalid on that basis alone. Upon DirecTV's petition for rehearing, the Illinois Appellate Court in *Bess II reversed* the circuit court's denial of arbitration, holding that DirecTV's arbitration

provision is enforceable and remanding the case with directions to compel arbitration and stay proceedings. *See* 2008 WL 740344, at *1, *6-*8.

In this case, we anticipated that Plaintiff Jose Trujillo would rely upon *Bess I* in opposing our motion to compel arbitration. We therefore explained in our memorandum in support of that motion (at pages 6–7) that ATTM’s arbitration agreement with Trujillo is not procedurally unconscionable under the criteria set forth in *Bess I*. In fact, Trujillo did not rely on *Bess I* in opposing our motion. In any event, *Bess I* is no longer relevant in light of *Bess II*, which ***upholds*** DirecTV’s arbitration provision and therefore confirms that ATTM’s arbitration provision is not susceptible to attack on procedural unconscionability grounds. *Bess II* also confirms that the Illinois public policy favoring the enforcement of arbitration agreements should inform a court’s consideration of procedural unconscionability. *See* 2008 WL 740344, at *8.

WHEREFORE, ATTM respectfully requests that the Court grant leave for ATTM to file this notice of supplemental authority in support of ATTM’s motion to compel arbitration and dismiss action.

Dated: March 27, 2008

Respectfully submitted,

/s Sarah E. Reynolds

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CERTIFICATE OF SERVICE

I, Sarah E. Reynolds, an attorney, I hereby certify that on March 27, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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