

**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,**

Plaintiffs,

v.

**APPLE COMPUTER, INC., a California,
corporation and AT&T MOBILITY, LLC,
a Georgia corporation,**

Defendant.

No. 07 CV 4946

**Judge Kennelly
Magistrate Judge Ashman**

MOTION FOR PRESERVATION OF DOCUMENTS

NOW COMES the Plaintiff, JOSE TRUJILLO, on behalf of himself and all others similarly situated, by and through his attorneys, LARRY D. DRURY, LTD., and respectfully moves this Court, pursuant to Rule 26 of the Federal Rules of Civil Procedure, as follows:

1. On August 13, 2007, Plaintiff filed his cause of action seeking various relief and for the certification of a class of those similarly situated, defined as follows:

Definition of the Plaintiff Class

Any and all consumers from 2007 through the date of judgment, throughout the United States, who purchased Defendants' iPhone.

2. Defendants were aware of their conduct at all times relevant herein.

3. Defendants' conduct in this matter raises serious issues in that this case concerns the following:

A. Whether Defendants committed a breach of the Illinois Consumer Fraud and Deceptive Business Practices Act and all like and similar statutes throughout the

United States;

- B. Whether Defendants purposefully omitted, misrepresented and/or fraudulently concealed the durability of the iPhone battery, the terms and conditions of its battery replacement program and “loaner” program, and the cost of same, prior to the purchase by Plaintiff and the class;
 - C. Whether the Defendants were unjustly enriched, to the detriment of Plaintiff and the class;
 - D. Whether Defendants breached their contracts to Plaintiff and the class, and breached their warranty to Plaintiff and the class, by misrepresenting and/or fraudulently concealing the durability of the iPhone battery, the terms and conditions of its battery replacement program and “loaner” program and the cost of same, prior to the purchase of the iPhone by the Plaintiff and the class.
4. Defendants’ conduct and their blatant refusal to recognize their culpability and compensate those who have been damaged, raises serious questions regarding future conduct they may take in this matter.
5. The proper resolution of this litigation, and the rights of the parties, will depend greatly upon the documentation of Defendants with respect to the purchase and durability of the iPhone battery, the terms and conditions of Defendants’ battery replacement program and “loaner” program and the cost of same prior to the purchase of the iPhone by the Plaintiff and the class, as alleged in the First Amended Class Action Complaint.
6. It would work no great hardship on Defendants to maintain all of the documents relating or relevant to the subject matter of this litigation, which are already in their actual or

constructive care, custody or control, and the retention of same would further the interests of justice for all parties concerned.

7. An order for the preservation of documents would prevent destruction of relevant documents later justified by any current and existing destruction policy of Defendants related to retention of same..

WHEREFORE, Plaintiff, JOSE TRUJILLO, on behalf of himself and all others similarly situated, moves this Honorable Court to enter an order of preservation of documents in the form attached hereto as Exhibit A or in such other form as this Court deems appropriate.

Respectfully submitted,

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

By: /s/ James R. Rowe

LARRY D. DRURY
JAMES R. ROWE
LARRY D. DRURY, LTD.
205 West Randolph, Suite 1430
Chicago, IL 60606
(312) 346-7950
ARDC# 0681024

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ORDER

THIS CAUSE COMING ON TO BE HEARD on the Motion for Preservation of Documents and the Court being duly advised in the premises;

IT IS HEREBY ORDERED:

1. During the pendency of this litigation or until further order of this Court, Defendant, APPLE COMPUTER, INC., and AT&T MOBILITY, LLC, and their respective officers, agents, servants, employees, attorneys and accountants shall not alter, destroy or otherwise dispose of any “document” relating or relevant to all consumer purchases of Defendants’ iPhone from 2007 to the date of judgment herein, throughout the United States, as alleged in the First Amended Class Action Complaint, in the actual or constructive care, custody or control of each such party from the date of entry of this Order forward, wherever such document is physically located.

EXHIBIT A

2. The term “document” and the scope of this Order shall, without limiting the generality of the foregoing, include the original and any non-identical copies thereof of any policy, claim, check, writing, drawing, map, blueprint, film, chart, photograph, audio and video tape recordings and transcripts thereof, and retrievable data, whether electromechanically or electromagnetically recorded and other data compilations from which information can be obtained relating or relevant to Defendant’s sale of personal and private information of its employees to private businesses, and its permitting private businesses to access its employee master file, throughout the United States including, but not limited to notices, memoranda, diaries, minutes, purchase records, purchase invoices, correspondence, claims, checks, policies, computer storage, tapes, computer storage cards or disks, books, journals, ledgers, statements, reports, invoices, bills, vouchers, worksheets, jottings, notes, letters, abstracts, audits, charts, checks, diagrams, drafts, recordings, instructions, lists, logs, orders, recitals, telegram messages, telephone bills and logs, resumes, summaries, compilations, computations and other formal and informal writings or tangible preservations of information.

3. Defendants shall be responsible for providing notice of this Order to their respective officers, agents, servants, employees, attorneys and accountants, and shall be responsible for compliance with this Order by such persons.

4. If counsel are unable to resolve disputes regarding the scope or implementation of this Order, any party may apply to the Court for clarification or relief from this Order upon

reasonable notice. All documents which are the subject to such disputes shall be preserved pending a ruling by the Court.

Dated: _____

ENTER:

LARRY D. DRURY
JAMES R. ROWE
LARRY D. DRURY, LTD.
205 West Randolph
Suite 1430
Chicago, IL 60606
(312) 346-7950
ARDC# 0681024