

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: APPLE IPHONE 3G AND 3GS  
“MMS” MARKETING AND SALES  
PRACTICES LITIGATION**

**THIS DOCUMENT RELATES TO:**

**EDLA No. 10-cv-20  
Case No. 1:09-CIV-9505 (S.D. New York)**

**Francis P. Monticelli,**

**Plaintiff,**

**v.**

**Apple Inc. and AT&T Mobility LLC,**

**Defendants.**

**CIVIL ACTION**

**MDL No. 2116**

**SECTION “J”  
JUDGE BARBIER**

**MAGISTRATE JUDGE WILKINSON**

**DEFENDANT APPLE INC.’S MOTION TO DISMISS  
FIRST AMENDED AND SUPPLEMENTAL COMPLAINT**

NOW INTO COURT, through undersigned counsel, comes defendant, Apple Inc. (“Apple”), who moves this Court to dismiss Plaintiff’s First Amended and Supplemental Complaint (“FAC”) with prejudice.

Apple seeks dismissal of this action on the grounds that the Plaintiff’s FAC fails to meet the pleading requirements of Rules 8, 9 and 12 of the Federal Rules of Civil Procedure. The

FAC does not identify the particular representations regarding Multimedia Messaging Service (“MMS”) to which the Plaintiff was allegedly exposed; it does not demonstrate that Plaintiff relied on the supposed representations; and it does not adequately allege that Plaintiff was caused injury thereby. Furthermore, a review of Apple’s advertisements and marketing material referenced in the FAC illustrate that Apple consistently disclosed that MMS would not be available until late summer 2009.

For these reasons, as set forth in the accompanying Memorandum of Law in Support, Apple prays that its Motion to Dismiss be granted, and this matter be dismissed with prejudice, at Plaintiff’s cost.

Respectfully submitted:

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*Counsel for Defendant, Apple, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading has been electronically filed and served upon all known counsel of record by electronic service and/or U. S. mail, properly addressed, this the 10<sup>th</sup> day of August, 2010.

*/s/ Quentin F. Urquhart*