

**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:**

*All Actions*

**CIVIL ACTION**

**MDL No. 2116**

**SECTION “J”  
JUDGE BARBIER**

**MAGISTRATE JUDGE WILKINSON**

**DEFENDANT APPLE INC.’S MOTION TO COMPEL ARBITRATION**

**NOW INTO COURT**, through undersigned counsel, comes Defendant, Apple Inc. (“Apple”), who moves this Court for an order compelling plaintiffs to arbitrate their claims against Apple. For the reasons set forth more fully in the attached memorandum of points and authorities in support of Apple’s motion, this Court should compel arbitration of plaintiffs’ claims against Apple under plaintiffs’ ATTM wireless services agreement (“WSA”).

The Supreme Court’s decision in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) establishes that the arbitration provision in plaintiffs’ ATTM wireless services agreement (“WSA”) is enforceable. Plaintiffs’ claims against both Apple and ATTM rely heavily – if not entirely – on the WSA, and their claims against Apple and ATTM are inextricably intertwined. Plaintiffs cannot deny Apple the right to compel the arbitration mandated by the WSA in light of their heavy reliance on that contract to support their claims. Consequently, under applicable law, plaintiffs are equitably estopped from refusing to arbitrate their claims against Apple.

Moreover, Apple has not waived its right to arbitration. Plaintiffs have not and cannot meet the required elements to show waiver. Consequently, this Court should compel arbitration of plaintiffs' claims against Apple under the WSA.

**WHEREFORE**, Defendant, Apple Inc., respectfully moves this Court to compel arbitration of plaintiffs' claims against Apple under plaintiffs' ATTM wireless services agreement.

Respectfully submitted,

/s/ Quentin F. Urquhart

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading has been electronically filed on October 20, 2011, with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing.

/s/ Quentin F. Urquhart