

**City of New York v T-Mobile USA, Inc.**

2020 NY Slip Op 34275(U)

December 23, 2020

Supreme Court, New York County

Docket Number: 451540/2019

Judge: Barry Ostrager

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY**

**PRESENT: HON. BARRY R. OSTRAGER, PART IAS 61EF**

*Justice*

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THE CITY OF NEW YORK and LORELEI SALAS, as Commissioner of the New York City Department of Consumer Affairs,	<table border="1"> <tr><td>INDEX NO.</td><td>451540/2019</td></tr> <tr><td>MOTION DATE</td><td></td></tr> <tr><td>MOTION SEQ. NO.</td><td>002</td></tr> </table>	INDEX NO.	451540/2019	MOTION DATE		MOTION SEQ. NO.	002
INDEX NO.		451540/2019					
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MOTION SEQ. NO.	002						
Plaintiffs,							
- v -							
T-MOBILE USA, INC., METROPCS NEW YORK LLC, 1930 WIRELESS INC., 2ND AVE WIRELESS INC., et al.,	<b>DECISION AND ORDER ON MOTION</b>						
Defendants.							
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HON. BARRY R. OSTRAGER

The City of New York and the New York City Department of Consumer Affairs (hereafter collectively “DCA”) commenced this action by Verified Summons and Complaint against T-Mobile USA, Inc. (“T-Mobile”) and its subsidiary MetroPCS New York, LLC (“MetroPCS”), as well as 42 dealers, seeking declaratory and injunctive relief, civil penalties, and restitution based on alleged violations of the Consumer Protection Law and regulations.

NYSCEF Doc. No. 1.

Before the Court is a motion (002) by Plaintiffs against defendants Freecell Wholesale Phones Inc., Madison Mobile Inc., Metro 86, Inc., Suleiman Wireless, Inc., and Superior Telecom, Inc. (“the Defaulting Defendants”) for a default judgment pursuant to CPLR § 3215.

On September 4, 2019, Plaintiffs filed the Summons and Verified Complaint in this action (NYSCEF Document No. 1). The Verified Complaint alleges that the Defaulting Defendants violated NYC Administrative Code § 20-700 (the Consumer Protection Law or “CPL”) as follows:

- Freecell overcharged one consumer by \$101.25.
- Madison overcharged one consumer by \$5.00.

- Metro 86 failed to provide a proper receipt to one consumer.
- Suleiman failed to provide a proper receipt to one consumer.
- Superior provided a defective receipt to one consumer.

Plaintiffs have properly served each of the Defaulting Defendants. *See* NYSCEF Doc.

Nos. 25, 37, 38, 50, 51. The Defaulting Defendants have not answered or otherwise appeared in this action.

The CPL prohibits “engag[ing] in any deceptive or unconscionable trade practice in the sale . . . or in the offering for sale . . . of any consumer good or service . . .” NYC Code § 20-700. NYC Code § 20-701(a) provides that deceptive trade practices include “any false . . . or misleading oral or written statement . . . which has the capacity, tendency or effect of deceiving or misleading consumers.” Rules of the City of New York § 5-32 mandates that businesses provide receipts to consumers with certain information. The Summons and Verified Complaint alleges that each of the Defaulting Defendants violated the CPL at least once, either by overcharging or failing to provide proper receipts.

On any application for a judgment by default, the applicant shall file proof of service of the summons and the complaint, proof of the facts constituting the claim, and proof of default.

CPLR§ 3215. Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim. *See* CPLR § 3215 (f)

On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316 of this chapter, and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party, *or where the state of New York is the plaintiff, by affidavit made by an attorney from the office of the attorney general who has or obtains knowledge of such facts through review of state records or otherwise.* Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney. (emphasis added)

*See also* CPLR § 3020 (d) (2) “[if] the party is the state, a governmental subdivision, board, commission, or agency, or a public officer [on] behalf of any of them, the verification may be made by any person acquainted with the facts.”

Plaintiffs submitted an affirmation by an attorney in the office of the General Counsel of the Department of Consumer Affairs which was made based upon review of records maintained by, and information obtained from, DCA, its officers and agents. *See* NYSCEF Doc. No. 98. Under CPLR § 3215 (f) and CPLR § 3020 (d) (2), the Verified Summons and Complaint (NYSCEF Doc. No. 1) may be viewed as an affidavit asserting the facts constituting the claim. Plaintiffs have established proof of service, proof of facts constituting violations of the CPL, and proof of default.

Violations of the CPL carry civil penalties between \$50 and \$350, and up to \$500 for “knowing” violations. *See* NYC Code § 20-703(a)-(b). Here, Plaintiffs established violations of the CPL, but did not establish that such violations were “knowing.” Accordingly, Plaintiffs are entitled to \$50 against each Defaulting Defendant.

Accordingly, it is hereby,

ORDERED that judgment shall be entered in favor of THE CITY OF NEW YORK and LORELEI SALAS, as Commissioner of the New York City Department of Consumer Affairs and against defendant Freecell Wholesale Phones Inc. in the amount of \$50.00; and it is further

ORDERED that judgment shall be entered in favor of THE CITY OF NEW YORK and LORELEI SALAS, as Commissioner of the New York City Department of Consumer Affairs and against defendant Madison Mobile Inc. in the amount of \$50.00; and it is further

ORDERED that judgment shall be entered in favor of THE CITY OF NEW YORK and LORELEI SALAS, as Commissioner of the New York City Department of Consumer Affairs and against defendant Metro 86, Inc. in the amount of \$50.00; and it is further

ORDERED that judgment shall be entered in favor of THE CITY OF NEW YORK and LORELEI SALAS, as Commissioner of the New York City Department of Consumer Affairs and against defendant Suleiman Wireless, Inc. in the amount of \$50.00; and it is further

ORDERED that judgment shall be entered in favor of THE CITY OF NEW YORK and LORELEI SALAS, as Commissioner of the New York City Department of Consumer Affairs and against defendant Superior Telecom, Inc. in the amount of \$50.00; and it is further

ORDERED that a status conference is scheduled for May 4, 2021 at 11:00 a.m.

Dated: December 23, 2020

*Barry R. Ostrager*  
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BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

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<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		
	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE