

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

The City of New York and Lorelei Salas, as  
Commissioner of the New York City  
Department of Consumer Affairs,

Plaintiffs,

-against-

T-Mobile USA, Inc., MetroPCS New York,  
LLC, 1930 Wireless Inc., 2<sup>nd</sup> Ave Wireless Inc.,  
907 White Plains Road LLC, A2A Wireless of  
NY Corp., Allied Wireless Archer Inc., AYM  
Wireless Corp., Broadway Metro Wireless, Inc.,  
Cell Nation of 77 Inc., Cell Nation of Babylon,  
Inc., Cellular Allstars Inc., E & S Products Inc.,  
Elite Wireless Group NY LLC, Five Stars of  
Brooklyn VIII Inc., Flatbush Cell Inc., Flatlands  
Wireless Inc., Floraison, Inc., Freecell Wholesale  
Phones Inc., GAJ Communications, Inc., G&M  
Wireless Inc., H.V. Impex Inc., Jerome Ave  
Wireless Inc., KTMS Communications NYC  
Inc., M&H Wireless Inc., M&H Wireless II Inc.,  
Madison Mobile Inc., Metro 86, Inc., Metro Com  
1 Inc., Metro Communications of Third Avenue  
18 Inc., Metro Place of Brooklyn, Inc., Metro  
Place Woodside, Inc., MetroComm LTE LLC,  
Metropolitan Wireless Anandpur Inc., Mobile  
119 Inc., PCS of Fordham Inc., Stellar Wireless  
Retail, LLC, STP Knickerbocker 2 Inc.,  
Suleiman Wireless, Inc., Superior Telecom, Inc.,  
Talk A Lot LLC, United Wireless LLC, Violet  
Communications, Inc., Wireless Broz Inc., &  
Wireless Sync of NYC LLC,

Defendants.

**SUMMONS**

**JURY TRIAL DEMANDED**

Index No.

Date Index No. Purchased:

**TO THE ABOVE-NAMED DEFENDANTS:**

T-Mobile USA, Inc.

MetroPCS New York, LLC

1930 Wireless Inc.

2<sup>nd</sup> Ave Wireless Inc.  
907 White Plains Road LLC  
A2A Wireless of NY Corp.  
Allied Wireless Archer Inc.  
AYM Wireless Corp.  
Broadway Metro Wireless, Inc.  
Cell Nation of 77 Inc.  
Cell Nation of Babylon, Inc.  
Cellular Allstars Inc.  
E & S Products Inc.  
Elite Wireless Group NY LLC  
Five Stars of Brooklyn VIII Inc.  
Flatbush Cell Inc.  
Flatlands Wireless Inc.  
Floraison, Inc.  
Freecell Wholesale Phones Inc.  
GAJ Communications, Inc.  
G&M Wireless Inc.  
H.V. Impex Inc.  
Jerome Ave Wireless Inc.  
KTMS Communications NYC Inc.  
M&H Wireless Inc.  
M&H Wireless II Inc.

Madison Mobile Inc.

Metro 86, Inc.

Metro Com 1 Inc.

Metro Communications of Third Avenue 18 Inc.

Metro Place of Brooklyn, Inc.

Metro Place Woodside, Inc.

MetroComm LTE LLC

Metropolitan Wireless Anandpur Inc.

Mobile 119 Inc.

PCS of Fordham Inc.

Stellar Wireless Retail, LLC

STP Knickerbocker 2 Inc.

Suleiman Wireless, Inc.

Superior Telecom, Inc.

Talk A Lot LLC

United Wireless LLC

Violet Communications, Inc.

Wireless Broz Inc.

Wireless Sync of NYC LLC

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on Plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear

or answer, judgment will be taken against you by default for the relief demanded in the complaint. The action will be heard in the Supreme Court of the State of New York in the County of New York. Venue is proper under CPLR § 505(a) because the Department of Consumer Affairs' principal office is at 42 Broadway, New York, NY 10004.

Dated: September 4, 2019  
New York, NY

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SUPREME COURT OF THE STATE OF NEW YORK  
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The City of New York and Lorelei Salas, as  
Commissioner of the New York City  
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Plaintiffs,

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T-Mobile USA, Inc., MetroPCS New York,  
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NY Corp., Allied Wireless Archer Inc., AYM  
Wireless Corp., Broadway Metro Wireless, Inc.,  
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Suleiman Wireless, Inc., Superior Telecom, Inc.,  
Talk A Lot LLC, United Wireless LLC, Violet  
Communications, Inc., Wireless Broz Inc., &  
Wireless Sync of NYC LLC,

Defendants.

**VERIFIED COMPLAINT**

**JURY TRIAL DEMANDED**

Index No.

Date Index No. Purchased:

The City of New York and Lorelei Salas as Commissioner of the New York City Department of Consumer Affairs (“DCA”) bring this action against T-Mobile USA, Inc. (“T-Mobile”), MetroPCS New York, LLC (“MetroPCS NY”), 1930 Wireless Inc., 2<sup>nd</sup> Ave Wireless Inc., 907 White Plains Road LLC, A2A Wireless of NY Corp., Allied Wireless Archer Inc., AYM

Wireless Corp., Broadway Metro Wireless, Inc., Cell Nation of 77 Inc., Cell Nation of Babylon, Inc., Cellular Allstars Inc., E & S Products Inc., Elite Wireless Group NY LLC, Five Stars of Brooklyn VIII Inc., Flatbush Cell Inc., Flatlands Wireless Inc., Floraison, Inc., Freecell Wholesale Phones Inc., GAJ Communications, Inc., G&M Wireless Inc., H.V. Impex Inc., Jerome Ave Wireless Inc., KTMS Communications NYC Inc., M&H Wireless Inc., M&H Wireless II Inc., Madison Mobile Inc., Metro 86, Inc., Metro Com 1 Inc., Metro Communications of Third Avenue 18 Inc., Metro Place of Brooklyn, Inc., Metro Place Woodside, Inc., MetroComm LTE LLC, Metropolitan Wireless Anandpur Inc., Mobile 119 Inc., PCS of Fordham Inc., Stellar Wireless Retail, LLC, STP Knickerbocker 2 Inc., Suleiman Wireless, Inc., Superior Telecom, Inc., Talk A Lot LLC, United Wireless LLC, Violet Communications, Inc., Wireless Broz Inc., and Wireless Sync of NYC LLC (collectively “Defendants”) and allege as follows.

### **INTRODUCTION**

1. Smartphones are practically a necessity in 2019. But staying connected is expensive, and many New Yorkers struggle to afford their monthly wireless bills or simply want to keep costs as low as possible. T-Mobile directly targets these consumers under its lower-priced prepaid (no contract) wireless brand, “Metro by T-Mobile” (“Metro”).<sup>1</sup>

2. Metro was supposed to herald “a New Day in Wireless” and “give value-conscious consumers a trade-off free wireless experience.”<sup>2</sup> According to T-Mobile, “hard-working people [who] are struggling to get by yet feel stuck with AT&T and Verizon” would no longer have to endure “subpar devices, service and coverage.”<sup>3</sup> Why? Because Metro by T-Mobile was here to save the day. Unfortunately for Metro consumers, T-Mobile’s management of Metro ensured that

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<sup>1</sup> Metro used to be called “MetroPCS.” T-Mobile announced the name change in 2018.

<sup>2</sup> See <https://www.t-mobile.com/news/metro-by-t-mobile>.

<sup>3</sup> Id.

“subpar” was exactly what consumers received – only now with the veneer of name-brand dependability.

3. Abusive sales tactics are rampant at Metro stores. At least several dozen have sold used phones to consumers as though they were new, charged consumers for fake taxes and unwanted services, or enrolled consumers in expensive financing plans without their consent. And the abuses do not end at the store.

4. The Metro website, which is owned by T-Mobile and emblazoned with the “Metro by T-Mobile” logo, deceives consumers about its stingy return policy: it advertises a “30 day guarantee” on all Metro cell phone purchases, but the fine print reveals that returns or exchanges are only available for a small sub-category of transactions, and only within seven days of purchase.

5. This illegal activity is pervasive, spanning 56 locations across all five boroughs of New York City, and includes both “authorized dealers” and stores directly operated by T-Mobile’s subsidiary, MetroPCS NY. The deception costs consumers considerably. For example, of the 21 phones that DCA identified as used, most were iPhones that cost several hundred dollars each.

6. T-Mobile and MetroPCS NY are liable for the deceptive and illegal conduct of their agents at the Metro stores.

7. Through this action DCA seeks to penalize Defendants’ illegal conduct, compel Defendants to disgorge all revenue generated by deceiving consumers, and secure a restitution fund to compensate New Yorkers scammed at Metro stores.

### **PARTIES**

8. Plaintiff City of New York is a municipal corporation incorporated under the laws of the State of New York.

9. Plaintiff DCA is an agency of the City of New York responsible for protecting and enhancing the daily economic lives of New Yorkers to create thriving communities. DCA is charged with the protection and relief of the public from deceptive and unconscionable business practices.

10. Plaintiff Lorelei Salas is the Commissioner of DCA and is empowered under section 2203 of the New York City Charter to enforce the New York City Consumer Protection Law.

11. Defendant T-Mobile USA, Inc. (“T-Mobile”) is a foreign business corporation with a principal executive office at 12920 SE 38<sup>th</sup> Street, Bellevue, Washington 98006. Among other services, T-Mobile offers wireless cellular network services to consumers under the brand name “Metro by T-Mobile” (“Metro”).

12. MetroPCS New York, LLC (“MetroPCS NY”) is a foreign limited liability company. It is a subsidiary of T-Mobile that manages and contracts with the entities that run hundreds of New York City’s Metro stores. It also directly operates approximately 12 Metro Stores (the “Corporate Stores”).

13. 1930 Wireless Inc. is a domestic business corporation registered in New York that accepts service of process at 1930 3<sup>rd</sup> Ave., New York, NY 10029.

14. 2<sup>nd</sup> Ave Wireless Inc. is a domestic business corporation registered in New York that accepts service of process care of Leon Golden, CPA, at 1600 Sheepshead Bay Rd., Brooklyn, NY 11235.

15. 907 White Plains Road LLC is a domestic business corporation registered in New York that accepts service of process at 907 White Plains Road LLC, 4 South Evarts Ave., Elmsford, NY 10523.



16. A2A Wireless of NY Corp. is a domestic business corporation registered in New York that accepts service of process at 5416 5<sup>th</sup> Avenue, Brooklyn NY 11220.

17. Allied Wireless Archer Inc. is a domestic business corporation registered in New York that accepts service of process at 1807 Archer St. Store #3, Bronx, NY 10460.

18. AYM Wireless Corp. is a domestic business corporation registered in New York that accepts service of process at 238 Merrill Ave., Staten Island, NY 10314.

19. Broadway Metro Wireless, Inc. is a domestic business corporation registered in New York that accepts service of process care of Elliot Dabah at 1611 Broadway, Brooklyn, NY 11207.

20. Cell Nation of 77 Inc. is a domestic business corporation registered in New York that accepts service of process care of Howard L. Stein, CPA, PC, at 50 Brunswick Woods Drive, East Brunswick, NY 08816.

21. Cellular Allstars Inc. is a domestic business corporation registered in New York that accepts service of process at 18 Andover Rd., Port Washington, NY 11050.

22. E & S Products Inc. is a domestic business corporation that accepts service of process care of Leon Golden, CPA, at 1600 Sheepshead Bay Rd., Brooklyn, NY 11235.

23. Elite Wireless Group NY LLC is a domestic business corporation registered in New York that accepts service of process at 117-31 Farmers Blvd., Saint Albans, NY 11412.

24. Five Stars of Brooklyn VIII Inc. is a domestic business corporation registered in New York that accepts service of process at 83-71 Mother Gaston Blvd., Brooklyn, NY 11212.

25. Flatbush Cell Inc. is a domestic business corporation registered in New York that accepts service of process at 537 Flatbush Ave., Brooklyn, NY 11225.

26. Flatlands Wireless Inc. is a domestic business corporation registered in New York that accepts service of process at 7909 Flatlands Ave., Brooklyn, NY 11236.

27. Floraison, Inc. is a domestic business corporation registered in New York that accepts service of process care of Anita Puri at 260A West Old Country Rd., Hicksville, NY 11801.

28. Freecell Wholesale Phones Inc. is a domestic business corporation that accepts process at 1222 Liberty Ave., Brooklyn, NY 11208.

29. GAJ Communications, Inc. is a domestic business corporation registered in New York that accepts service of process at 142 West 32nd St., New York, NY 10001.

30. G&M Wireless Inc. is a domestic business corporation registered in New York that accepts service of process at 516 86<sup>th</sup> St., Brooklyn, NY 11209.

31. H.V. Impex Inc. is a domestic business corporation registered in New York that accepts service of process at 6405 Fleet St. Apt. A, Rego Park, NY 11374.

32. Jerome Ave Wireless Inc. is a domestic business corporation registered in New York that accepts service of process care of Leon Golden, CPA, at 2470 E. 16th St., Brooklyn, NY 11235 and is located at 1209 Jerome Ave., Bronx, NY 10452.

33. KTMS Communications NYC Inc. is a domestic business corporation registered in New York that accepts service of process at 490 North Broadway, Yonkers, NY 10701.

34. M&H Wireless Inc. is a domestic business corporation registered in New York that accepts service of process at 39-24 Queens Blvd., Sunnyside, NY 11104.

35. M&H Wireless II Inc. is a domestic business corporation registered in New York that accepts service of process at 46-27 Greenpoint Ave., Sunnyside, NY 11104.

36. Madison Mobile Inc. is a domestic business corporation registered in New York that accepts service of process at 197D Madison St., New York, NY 10002.

37. Metro 86, Inc., is a domestic business corporation registered in New York that accepts service of process at 1981 86 St., Brooklyn, NY 11214.

38. Metro Com 1 Inc. is a domestic business corporation registered in New York that accepts service of process at 1407 St. Nicholas Ave., New York, NY 10033.

39. Metro Communications of Third Avenue 18 Inc. is a domestic business corporation registered in New York that accepts service of process at 55-24 Myrtle Ave., Ridgewood, NY 11385.

40. Metro Place of Brooklyn, Inc. is a domestic business corporation registered in New York that accepts service of process at 4404 New Utrecht Ave., Brooklyn, NY 11219.

41. Metro Place Woodside, Inc. is a domestic business corporation registered in New York that accepts service of process care of Howard L. Stein, CPA, PC, at 50 Brunswick Woods Drive, East Brunswick, NY 08816.

42. MetroComm LTE LLC is a limited liability company registered in New Jersey that accepts service of process via the New York Department of State.

43. Metropolitan Wireless Anandpur Inc. is a domestic business corporation registered in New York that accepts service of process at 2265 Jerome Ave., Bronx, NY 10468.

44. Mobile 119 Inc. is a domestic business corporation registered in New York that accepts service of process at 11918 Jamaica Ave., Richmond Hill, NY 11418.

45. PCS of Fordham Inc. is a domestic business corporation registered in New York that accepts service of process at 379 E Fordham Rd, Bronx, NY 10458.

46. Stellar Wireless Retail, LLC is a domestic limited liability company registered in New York that accepts service of process care of Jaspreet S. Mayall, Esq., at Certilman Balin Adler & Hyman, LLP, 90 Merrick Ave., East Meadow, NY 11554.

47. STP Knickerbocker 2 Inc. is a domestic business corporation registered in New York that accepts service of process at 1197 East 233rd St., Ste. B, Bronx, NY 10466.

48. Suleiman Wireless, Inc. is a domestic business corporation registered in New York that accepts service of process at 7112 3rd Ave., Brooklyn, NY 11209.

49. Superior Telecom, Inc. is a domestic business corporation registered in New York that accepts service of process at 40 Bishop Lane, Hicksville, NY 11801.

50. Talk A Lot LLC is a domestic limited liability company registered in New York that accepts service of process at 11 Grace Drive, Old Westbury, NY 11568.

51. United Wireless LLC is a domestic limited liability company registered in New York that accepts service of process at 3201A White Plains Rd., Bronx, NY 10467.

52. Violet Communications, Inc., was a domestic business corporation dissolved in July 2018. It accepts process care of Juan Rozon at 54-16 31<sup>st</sup> St., Woodside, NY 11337.

53. Wireless Broz Inc. is a domestic business corporation registered in New York that accepts service of process at 224 Bay St., Staten Island, NY 10301.

54. Wireless Sync of NYC LLC is a domestic limited liability company registered in New York that accepts service care of The Limited Liability Company at 5 Burns Ave. Unit 9, Hicksville, NY 11801.

55. The Defendants described in ¶¶ 13-54 are Metro authorized dealers, collectively the “Dealer Defendants.”

#### **VENUE**

56. Venue is proper in this Court under New York Civil Practice Law and Rules § 503(a) because DCA’s principal office is in New York County.

### RELEVANT LAW

57. The New York City Charter (“Charter”) § 2203(d) authorizes DCA to enforce NYC Code § 20-700 et seq. and 6 RCNY § 5-01 et seq. (collectively, “Consumer Protection Law” or “CPL”). The CPL bars “any deceptive or unconscionable trade practice in the sale . . . of any consumer goods or services[.]” NYC Code § 20-700. Deceptive practices include “representations that goods . . . are original or new if they are deteriorated, altered, reconditioned, reclaimed, or secondhand” and “the use, in any oral or written representation, of exaggeration, innuendo, or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive[.]” NYC Code § 20-701(a). Deceptive practices are not limited to representations made to consumers but may include those made to third parties in a way that tends to deceive consumers. Id.

58. The CPL also requires businesses to provide consumers with detailed, itemized receipts. See Rules of the City of New York, title VI (“6 RCNY”), section 5-32.

59. Finally, the CPL provides that “[a] seller of a used item must disclose clearly that the item is used, in any advertisement or sales transaction concerning the used item” and that “[w]ords such as ‘used,’ ‘antique,’ ‘demonstrator,’ ‘floor model,’ ‘rebuilt,’ ‘renovated,’ ‘restyled,’ or ‘remodeled’ may be used to indicate that an item is used.” 6 RCNY § 5-36(a)-(b).

60. “To establish a cause of action under [the CPL] it need not be shown that consumers are being or were actually injured.” NYC Code § 20-703(e). Violations of the CPL carry civil penalties of up to \$350, and \$500 for “knowing” violations. NYC Code § 20-703(a)-(b).

61. NYC Code § 20-703(c) authorizes the City, upon a finding by DCA of “repeated, multiple or persistent violation of any provision of” the CPL, to bring an action to compel disgorgement of all proceeds from the violations and pay DCA’s investigation costs. From the

disgorged funds, DCA may determine restitution for consumers based on procedures approved by the Court. The City may also seek orders enjoining the violative acts or practices. NYC Code § 20-703(d).

### **STATEMENT OF FACTS**

62. T-Mobile sells wireless service. With over 81 million customers, it is America's third-largest wireless carrier and consistently boasts high customer growth. In 2013, T-Mobile grew even more when it merged with MetroPCS Communications, Inc., and it recently announced plans to buy another major competitor, Sprint.

63. Casting itself as a brash innovator, T-Mobile flaunts its zeal for embracing new business models in pursuit of growth. For example, in its 2018 Annual Report to investors, T-Mobile claimed that it "set out to disrupt a stupid, broken, arrogant industry and change wireless for good."

64. After the 2013 merger, T-Mobile retained the brand name "MetroPCS" and designated it as its lower-priced wireless service.

65. In 2018, however, MetroPCS was rebranded "Metro by T-Mobile" ("Metro"). This was a big deal for T-Mobile, and they made sure everyone knew. According to the press release heralding the rebranding, "because Metro by T-Mobile *is* T-Mobile, you get the latest and greatest Android and iOS smartphones on the same advanced network that covers 99% of the population."<sup>4</sup> The press release went on: "Metro by T-Mobile customers just get more, for less. Much less."<sup>5</sup>

66. Lest anyone be left unsure as to the full impact of Metro PCS receiving T-Mobile's stamp of approval, the press release included a YouTube video by T-Mobile's US CEO, John Legere, announcing, "Today is a big day for us. PCS is out, and Metro by T-Mobile is in." The

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<sup>4</sup> See <https://www.t-mobile.com/news/metro-by-t-mobile>.

<sup>5</sup> Id.

video then introduces the flashy new logo, designed to leave no doubt in the minds of anyone who sees it that MetroPCS is now a T-Mobile brand – with all the benefits such a relationship implies.



67. Metro’s “prepaid” model is attractive to low-income, young, and immigrant consumers because service is paid for a month in advance and not received until payment is complete; thus, no credit history is required.

68. Consumers may use wireless service on a variety of devices, including their phones. Under the Metro banner, T-Mobile advertises and sells phones sold by manufacturers such as Apple, Samsung, and Coolpad. Consumers can purchase phones and service at “Metro by T-Mobile”-branded storefronts (“Metro Stores”) throughout New York City.

69. Approximately 12 of NYC’s Metro Stores are directly owned by T-Mobile’s subsidiary, MetroPCS New York, LLC (“MetroPCS NY”). These locations are considered “Corporate Stores,” and they are managed by T-Mobile employees.

70. Hundreds more Metro Stores are operated by “authorized dealers” or “Dealer Stores” – corporations that contract with MetroPCS NY for permission to operate under the Metro brand.

71. As described below, both the Corporate Stores and the Dealer Stores engage in illegal conduct.

## I. DEFENDANTS' RELATIONSHIPS AND WORKING AGREEMENTS

### A. MetroPCS NY's Relationship with Authorized Dealers

72. The Dealer Defendants are Metro Authorized Dealers on whom MetroPCS NY imposes a uniform contract.<sup>6</sup> See Exhibit A (“Exclusive Indirect Dealer Agreement” or “Dealer Agreement”). There are two ways to become an authorized dealer: (i) contract directly with MetroPCS NY and sign a Dealer Agreement, or (ii) contract with a current authorized dealer and sign a “Subdealer Agreement,” which incorporates by reference and attaches the Dealer Agreement. Notably, MetroPCS NY approves all subdealers and ensures they are bound by the terms of the Dealer Agreement. See Exhibit B (“Exclusive subdealer’s agreement to comply with dealer agreement” or “Subdealer Agreement”).

73. The Dealer Agreement and the Subdealer Agreement establish that all authorized dealers, including the Dealer Defendants, are agents of MetroPCS NY, based on the actual authority that MetroPCS NY extends to them and the degree of control it maintains over them.

74. MetroPCS NY, through the Dealer Agreement, authorizes the Dealer Defendants to sell its mobile service to consumers, and to sell phones under the Metro branding. See Exhibit A, 3 ¶ 2.2 (“MetroPCS [NY] hereby appoints Dealer as an agent . . . . Dealer acts as a limited agent of MetroPCS [NY] for the purpose of selling Equipment and promoting Services and owes MetroPCS [NY] the fiduciary duties and other obligations of an agent to its principal.”).

75. MetroPCS NY maintains the right to control the Dealer Defendants business through the Dealer Agreement and other rules and guidelines. For example, Dealer Defendants are prohibited from selling other wireless carriers’ service, not only in their Metro Stores, but in the entire geographic area defined as “NY Market” (see Exhibit A, 2 ¶ 2.1); no one “affiliated” with a

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<sup>6</sup> The others are Corporate Stores (see ¶ 69).



Dealer Defendant may sell competing products, “directly or indirectly,” within a two-mile radius of each Dealer Defendant’s Metro Store (4 ¶ 2.12); and a Dealer Defendant must notify MetroPCS NY in writing if it or an “affiliated person” sells competing products anywhere in the world (4 ¶ 2.13).

76. The Dealer Agreement also dictates staffing guidelines, i.e., how many employees must be present in any given Metro Store at a time (4 ¶ 2.14); maintains the right to “supervise Dealer’s distribution and marketing . . . and to inspect and test the [phones] that Dealer offers for sale” (5 ¶ 3.7); and has “the right to examine and audit the books and records of” the Dealer Defendants (4-5 ¶ 2.10). Moreover, Dealer Defendant must maintain copies of consumer receipts for twelve months so that they are available for the hypothetical audit (7 ¶ 5.9).

77. Dealer Defendants are required to purchase millions of dollars of insurance coverage of various types from companies with “policyholder ratings no lower than ‘A-’ in the most recent edition of A.M. Best’s Insurance and Rating Guide.” Exhibit A, 9 ¶ 10.1-10.2.

78. Finally, MetroPCS NY tracks Dealer Defendants’ performance and may punish laggards. It can terminate anyone who “fails to sell or activate new customers at levels comparable to other dealers in this geographic market” (Exhibit A, 1 ¶ 1.2.2(b)), and Dealer Defendants are “expected” to pay employees in a way that is “geared toward exceeding [wireless service] activation levels[.]” See Exhibit C, 4 ¶ 4.3 (“Exclusive Authorized Retailer Guidelines” or “Guidelines”).

79. In short, the Dealer Defendants are agents of MetroPCS NY. MetroPCS NY authorizes them to act (so that it can use them to drive sales of T-Mobile’s wireless service), and it maintains control over them (so it can foreclose the possibility of competition with other wireless carriers).

## **B. T-Mobile's Relationship with Authorized Dealers**

80. T-Mobile is liable for the conduct of the Dealer Defendants because its words and conduct gave rise to the appearance and belief that Metro and T-Mobile are one and the same. In fact, T-Mobile told the public in no uncertain terms: “**Metro by T-Mobile is T-Mobile.**” T-Mobile reinforced this message by emblazoning its name on Metro’s website and redesigning Metro’s brick and mortar locations to have the look and feel of a T-Mobile brand. In so doing, T-Mobile aggressively promoted the image of Dealer Stores as its agents.

81. Specifically, in 2018, five years after legally merging with MetroPCS Communications, T-Mobile stamped its identity on the prepaid service by changing its name to Metro by T-Mobile. Citing the “subpar devices, service, and coverage” of Metro’s prepaid competitors, the branding move was designed to confer T-Mobile’s relatively strong reputation on Metro. The press release described “a new brand and new mission to give value-conscious consumers a trade-off free wireless experience.”

82. Metro’s president told reporters that his division rebranded to drive home to consumers that Metro operated on the T-Mobile network.

83. T-Mobile did not limit its marketing push to selling Metro’s wireless service; it also infused Metro Stores, including Dealer Stores, with corporate branding that featured the T-Mobile logo, including Metro by T-Mobile flags and banners, Metro by T-Mobile advertisements for the latest phones, and Metro by T-Mobile signs that read “help us improve,” “now hiring,” and “Se Habla Español.”



84. T-Mobile's posture of authority extends to the internet. Metro's website (the "Metro Website"), which bears the T-Mobile logo, invites users to "find a store," and the search tool lists Dealer Stores, including the Dealer Defendants.<sup>7</sup>

85. The overall effect of T-Mobile's aggressive branding, especially online, is that a consumer shopping for wireless service will enter a Dealer Store assuming that T-Mobile is in charge.

## II. DEFENDANTS' ILLEGAL CONDUCT

### A. Defendants Deceive Consumers into Purchasing Used Phones

86. Metro Stores do not advertise that they sell used phones. No labels or signs can be found to indicate that certain of the items being sold are "used" or "rebuilt" or "remodeled," or any of the other terminology required by 6 RCNY § 5-36(a)-(b). The Metro Website says nothing about used phones, and when asked, the salespeople typically do not admit to selling used phones. DCA sent investigators undercover to 18 locations across the City after determining that they were selling used phones. When asked directly, only one admitted to selling used phones – all of the others stated that they did not sell used phones. So consumers have every reason to assume the phones they buy at Metro Stores are new.

87. Yet dozens of NYC consumers in the last three years have complained that the phones they bought from NYC Metro Stores were used:

- a. Wilmar Chavez actually obtained written documentation from the Apple store showing his iPhone 6s+ was activated more than a year before he purchased it. When Mr. Chavez tried to report what he found, his dealer, Metro Place Woodside, Inc., hung up on him.

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<sup>7</sup> See [metrobyt-mobile.com](http://metrobyt-mobile.com); [metrobytmobile.com](http://metrobytmobile.com) and [metropcs.com](http://metropcs.com) redirect to this page.

- b. Yamilca Del Guidice also obtained Apple documentation showing that her iPhone 7+ had been activated more than a year before she bought it. MetroComm LTE LLC, which sold her the used phone, was unmoved by the evidence and refused to exchange the phone.
- c. Angel de Paula de la Cruz realized his “new” iPhone 7 was used as soon as he got it home, when he plugged it in and it did not charge.
- d. Stacey Defreitas could not charge her “new” iPhone 5 SE, either.
- e. Kathy Johnson tried to return her “new” iPhone 6 because a button was not working; the Dealer Store, Wireless Broz Inc., agreed to swap it out for another “new” iPhone, but then the Apple store told her that it was used. When Ms. Johnson confronted Wireless Broz Inc., the salesperson told her to get the fuck out of the store.
- f. Alec Knipe realized his “new” iPhone 7 was used when he took it home and saw that it was covered in scratches; he then noticed that the phone’s serial number did not match the one on the box.
- g. Katherin Rodriguez bought a “new” iPhone 7+ that had 128GB storage, according to its box. But after it failed to charge, she noticed dust in the phone’s speakers and buttons – and that the settings showed it had only 32 GB storage.
- h. Jaspreet Singh spent \$1,350 on a “new” iPhone X Max at M&H Wireless Inc. (“M&H”). A few weeks later it stopped working. M&H told Mr. Singh that the phone had been blacklisted (i.e., it had been reported stolen) but that it would replace the phone the next day. The next day, M&H said to return the following Tuesday, and the following Tuesday, M&H told him to return the next week.

88. Every consumer who bought a used phone believed they were buying a new phone, and Defendants gave them no reason to believe otherwise – there were no signs indicating that phones were used, Metro Store employees certainly never said the phones were used, and the phones were not priced as if they were used, with each consumer spending hundreds of dollars each and many paying over \$500.

89. Despite the evidence that Defendants are selling used phones as new, Defendants' internal documentation list these phones as "BYOD," short for "bring your own device" – a code that appears to signify that the consumer bought the phone elsewhere and took it to a Metro Store to be activated. But this characterization would be false. Some of the consumers retained their receipts, and those receipts show sales of between \$600 and \$900 for phones Defendants list as BYOD. At least 20 NYC consumers whose phone sales Defendants categorized as BYOD did not, in fact, bring their own devices; rather, they bought these used phones at a Metro Store believing them to be new.<sup>8</sup>

90. T-Mobile, MetroPCS NY, and certain Dealer Defendants violated the CPL at least 21 times by selling used phones as new (the "Used Phone Deception Violations"). DCA seeks penalties for each Used Phone Deception Violation identified in Schedule A, and for any additional violations discovered before trial.

91. Pursuant to NYC Code § 20-703(c), DCA also seeks disgorgement of all revenue from the sale of used phones not clearly marked and identified as used.<sup>9</sup> DCA will determine restitution for individual consumers using procedures approved by the Court.

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<sup>8</sup> MetroPCS NY allows Metro Stores to sell used phones under a "Bring Your Own Phone" or "BYOP" activation code. BYOP (a different designation than BYOD) is therefore ambiguous, since Metro's consumer-facing materials use the phrase "bring your own phone" to refer to taking a phone that already belongs to you and having it activated at a Metro Store. BYOD appears to have similar dual identities, or to actually be the same thing as BYOP. On June 4, 2019, DCA sought clarification via a subpoena for documents related to both programs; T-Mobile did not comply with the subpoena.

<sup>9</sup> Plaintiffs do not seek disgorgement from those Defendants charged with only one CPL violation.

**B. Defendants Deceive Consumers About Financing Schemes**

92. Metro Stores partner with third-party financing companies (“Financing Companies”) that are not subject to usury laws, which structure their contracts as “rental purchase agreements” instead of as loans or lines of credit. For example, a company called SmartPay will finance a consumer’s \$800 phone by buying it from the Metro Store and leasing it to the consumer for \$148.36 per month for twelve months, after an initial payment of \$120.<sup>10</sup> Assuming no late fees, the consumer will pay an additional \$1,100.32 above the phone’s sticker price.

93. Financing Companies never meet consumers and they do not have kiosks in Metro Stores. Rather, they interact with consumers through online modules that consumers access either on their own or on a Metro Store device, with the help of a Metro Store employee. The consumer is meant to read the contract on a screen and sign it by typing or making a mark on the screen.

94. Once the contract is signed, the consumer goes home with a “new” phone (or other merchandise). The Financing Company emails the contract to the consumer, pays the Metro Store for the phone, “leases” it to the consumer, and then takes periodic payments directly from the consumer’s bank account. If the funds are not available, the Financing Company may initiate debt collection procedures such as negative credit reporting and aggressive phone calls.

95. Though Financing Companies’ terms can be brutal for consumers, they are appealing to retailers such as Metro Stores. As SmartPay explains to retailers on its website, it offers “quick checkout” and poses “no risks or costs to you.” “[W]ith SmartPay, customers are more likely to choose a higher cart amount since they don’t need to pay the full amount up front.”

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<sup>10</sup> See calculator available at <https://apply.smartpaylease.com/learnmore/q1w-dgtracfoneweb> (accessed August 20, 2019).

96. With this scheme in place, Defendants have deceived NYC consumers about things as basic as the actual price of the phone to things as complicated as the terms of financing. Defendants have engaged in these deceptions at least 12 times in the last three years.

97. For example, in January 2019, Vashti Anais Wagner shopped for a phone advertised for \$599. Defendant Metropolitan Wireless Anandpur Inc. (“Anandpur”) charged her \$710 for the phone, according to a receipt. The Anandpur employee then filled out a SmartPay contract, entered Ms. Wagner’s email address as noemailft67484@gmail.com, and falsely recorded the phone’s purchase price as \$1,150. The employee did not show Ms. Wagner the contract, appears to have e-signed it in her name, and did not tell her that she would be leasing the phone rather than buying it outright. Thus, unbeknownst to Ms. Wagner, SmartPay had leased the phone to her for \$199.21 per month, totaling \$2,191.30 – \$1,592.30 more than the advertised price; \$1,481.30 more than the prices supposedly charged by the Metro Store; and \$1,041 more than price surreptitiously recorded on the contract by the Metro Store employee.

98. Ms. Wagner discovered the true terms of her contract – and how much she would have to pay – after SmartPay began seeking payment. As discussed in ¶¶ 119-24, below, Ms. Wagner was also charged other illegal fees and overcharged for a second phone, which was not part of the lease.

99. In 2017, Melvin Bell applied for SmartPay financing at home and was approved, which should have allowed him to pick out a phone at the Metro Store he had chosen, a Corporate Store in Harlem. When he got there, however, an employee made him enter his personal information in SmartPay’s portal again, on their computer. After he did so, he was told that SmartPay had denied him financing. Mr. Bell left without a phone. Later that day, Mr. Bell checked his SmartPay account, and it showed that he had leased a phone.



100. Mr. Bell repeatedly demanded that the Corporate Store give him the phone or tell SmartPay the truth. It refused. Meanwhile, SmartPay kept taking money from his bank account. To protect himself from the auto-debits, he closed the bank account. SmartPay reported the episode to credit bureaus as a delinquency. Mr. Bell's credit rating is now destroyed.

101. Defendant Cell Nation of 77 Inc. ("Cell Nation") accepted a return for a defective phone but refused to notify SmartPay, so the consumer had to continue paying for a phone she did not have that had never worked. Cell Nation kept the money paid by SmartPay.

102. Defendant Elite Wireless Group NY LLC forced a consumer to use SmartPay even though she said she wanted to use her regular credit card, then entered her email address incorrectly so that she did not receive the SmartPay contract.

103. Finally, in at least eight other instances, Metro Stores simply lied to consumers about down payments or required monthly payments.

104. T-Mobile, MetroPCS NY, and certain Dealer Defendants violated the CPL at least 12 times by misrepresenting the terms and conditions of purchases and financing (the "Financing Violations"). DCA seeks penalties for each Financing Violation identified in Schedule B, and for any additional violation discovered before trial.

105. Pursuant to NYC Code § 20-703(c), DCA also seeks disgorgement of all revenue received as a result of the Financing Violations.<sup>11</sup> DCA will determine restitution for individual consumers using procedures approved by the Court.

### **C. Defendants Deceive Consumers About Their Return Policy**

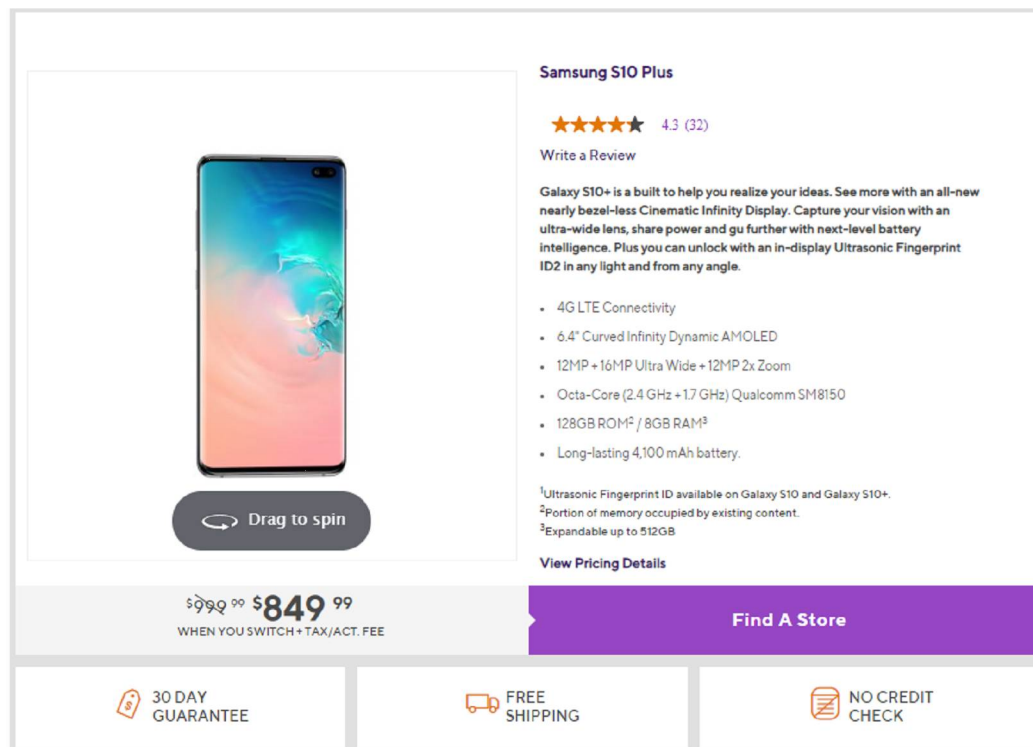
106. T-Mobile sets the return policy, called the MetroPROMISE® Return Policy, for all Metro Stores and advertises it on the Metro Website. The advertisements are deceptive in two

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<sup>11</sup> Plaintiffs do not seek disgorgement from those Defendants charged with only one CPL violation.

ways: first, they falsely tell consumers that phones carry a “30 day guarantee,” and second, they omit key information about the policy’s restrictions.

107. The Metro Website says “30 day guarantee” in a prominent position below the price on every page that displays details about a phone. There is a price tag graphic next to the text.



108. In fact, the MetroPROMISE® Return Policy only allows returns within *seven* days for in-store purchases – and *all purchases are in-store*, because it is impossible to buy a phone from the Metro Website (thus the “Find A Store” button to the right of the price in the graphic, above). The touted “30 day guarantee” is wholly illusory, and completely deceptive.

109. The Metro Website features a Virtual Chat Assistant that responds as follows when asked about return policies:

Purchases made online must be returned by mail within 30 days, while those made in store must be returned in store within seven days.

If you're not 100% satisfied with a purchase, we offer a money-back guarantee with our MetroPROMISE®. Your return must meet these criteria:

- Less than one hour of talk time on phones
- A "like new" condition
- Original packaging and accessories

110. The Virtual Chat Assistant then provides a link to the full MetroPROMISE® Return Policy.

111. The MetroPROMISE® Return Policy contains key terms that the Virtual Chat Assistant does not mention. Specifically, it bars returns from consumers who bought the phone for an existing line of service or who have "warranty issues," which are not defined.

112. Thus, none of the following hypothetical consumers would be eligible for a refund:

- a. A consumer who bought a new phone on his old line of service and returned it five minutes after buying it, having never broken the seal on the box.
- b. A consumer who discovered five minutes after purchase that her new phone was sold with a defect.
- c. A new Metro consumer who talked on her phone for an hour after purchase, then realized that the phone's camera did not meet her needs.
- d. A new Metro consumer who kept a new phone in its packaging, without breaking the seal, and now wants to return it eight days after purchase.

113. In sum, the MetroPROMISE® Return Policy has nothing in common with a "30 day guarantee," nor does it resemble what the Virtual Chat Assistant describes. Instead, it expires in seven days and two of its most restrictive and unintuitive features – its inapplicability to phones bought for an existing line of service and defective phones – go unmentioned by the Virtual Chat Assistant.

114. T-Mobile violated the CPL at least 1,096 times in the last three years by advertising the “30 day guarantee” for phones on its website (the “30 Day Guarantee Violations”). DCA seeks penalties for each 30 Day Guarantee Violation committed in the last three years, and for any violation discovered before trial.

115. T-Mobile also violated the CPL at least 1,096 times in the last three years by omitting material terms from the description of the MetroPROMISE® Return Policy provided by its Virtual Chat Assistant (the “Virtual Chat Violations”). DCA seeks penalties for each Virtual Chat Violation committed in the last three years, and for any additional violation discovered before trial.

**D. Defendants Deceived Consumers About Taxes, Fees, and Other Charges**

116. Defendants have overcharged consumers through deceptive representations about taxes and other fees, and by surreptitiously adding unwanted services to wireless plans and unexplained fees on consumer receipts.

117. At many Metro Stores, when consumers buy a phone, they must pay \$2.28 for “Device Change Taxes and Regulatory Fees.” Consumers who are new to Metro must pay \$3.03 for “Device Activation Taxes and Regulatory Fees.” These charges are in addition to an activation fee of \$15. Both the Device Change Taxes and Regulatory Fees and the Device Activation Taxes and Regulatory Fees, however, appear to be made up. Phones are subject to ordinary sales tax, and wireless service is subject to monthly taxes and regulatory fees. According to the Metro Website, all wireless taxes and regulatory fees are included in the advertised prices of Metro’s monthly wireless plans. So when Defendants demand money from consumers at point of sale for “taxes and regulatory fees,” they are either lying on the receipt about where that money is going, or they are lying on their website about taxes and fees being included in the cost of the wireless plan.

118. This is not Defendants' only tax deception. When a business discounts an item, New York assesses sales tax based on the lower, discounted price that the consumer actually pays.<sup>12</sup> See Tax Law § 1101(b)(3). But at least seven times, Metro has charged consumers sales tax based on the higher, pre-discounted price. Metro has also charged duplicate taxes to at least five consumers.

119. Finally, defendants have overcharged consumers by including in their bills unrequested, often unexplained, payments, fees and charges. Ms. Wagner provides a good example of a consumer who experienced the full range of Defendants' misconduct.

120. Anandpur charged Ms. Wagner \$1,231.88 for two phones and accessories, an "Activation Payment" of \$171.88, plus a "TAX" of \$134.00. Then, several lines down, the receipt reflects another tax – a "Sales Tax" of \$104.50, bringing her purchase total to \$1,470.00 (after a whopping 38 cent discount). Neither of the "tax" figures works out to NYC's sales tax of 8.875%, and it is unclear how they were calculated. When Ms. Wagner asked why she had been taxed twice, the Anandpur employee responded, "oh yeah, that's just the system."

121. Defendant Anandpur demanded \$320 to cover part of Ms. Wagner's transaction and packaged the rest into a SmartPay lease, committing several deceptive acts along the way (see ¶¶ 97-98). Smartpay then added sales tax to the figure supplied by Anandpur, marking the *third time* Ms. Wagner was charged a purported sales tax on the same item.

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<sup>12</sup> See Tax Law § 1111(a); Compilation of Codes, Rules and Regulations § 526.5(d)(2).

Item	Description	Amount
Transaction # 513533		
Tran. Date: 1/26/2019		
Tran. Time: 4:19:15 PM		
Cashier: nadin		
Register: 1		
1114	IPHONE XR	\$710.00
1114	IPHONE 6S	\$210.00
1119	Activation Payment	\$171.88
1114	SIM CARD	\$25.00
1114	SIM CARD	\$25.00
1114	SIM CARD	\$25.00
1114	SIM CARD	\$25.00
1088	Regular Cases	\$20.00
1088	SCRREN PROTECTOR	\$20.00
1114	TAX	\$134.00
	Discount	(\$0.38)
SubTotal:		\$1,365.88
Discount:		(\$0.38)
Sales Tax:		\$104.50
Total:		\$1,470.00

122. In addition to deceiving Ms. Wagner about taxes and financing, Anandpur deceived her about the \$171.88 “activation payment,” which was not disclosed at any point prior to payment, despite being materially high.

123. In sum, Ms. Wagner was treated to the full monty of deceptive conduct:

- She was overcharged for the phones she bought, which were advertised at \$599 and \$49, respectively, but sold to her at \$710 and \$210;
- She was charged \$25 each for four sim cards advertised for \$10 each;
- She was charged illegal tax – twice; and,
- She was subjected to a lease when she thought she was making a purchase.

124. When Ms. Wagner complained to the Better Business Bureau, Anandpur eventually gave her a cash refund for the phone overcharges and one of the three tax charges. Anandpur,

however, did not refund the other illegal charges or notify SmartPay of its error. As a result, Ms. Wagner remains imprisoned by the oppressive, unwanted SmartPay lease. Ms. Wagner is not the only victim of this type of misconduct.

125. In 2017, Alec Knipe bought an iPhone 7 at a Dealer Store owned by Defendant M&H Wireless II Inc. After paying \$802.59, Mr. Knipe realized that his receipt included a charge for \$80.00. There was no description next to or above the charge, and it was not a charge for his regular service. (He also realized that the phone was scratched, because it was used. See ¶ 87(f).)

126. Metro charged at least two other consumers undisclosed, illegal “activation payments” of over \$70 each, has overcharged at least one other consumer for sim cards, and has overcharged at least four consumers by including unwanted services like GPS navigation, extra lines, or hotspot capability, in monthly wireless plans.

127. T-Mobile, MetroPCS NY, and certain Dealer Defendants violated the CPL at least 23 times by overcharging consumers using illegal fees, fake taxes, and unwanted services (the “Overcharging Violations”). DCA seeks penalties for the Overcharging Violations identified in Schedule C, and for any additional violations discovered before trial.

128. Pursuant to NYC Code § 20-703(c), DCA also seeks disgorgement of all revenue received as a result of the Overcharging Violations.<sup>13</sup> DCA will determine restitution for individual consumers using procedures approved by the Court.

#### **E. Defendants Failed to Provide Legal Receipts**

129. NYC businesses must provide sales receipts to consumers who make purchases of twenty dollars or more. The receipts must state the seller’s legal name and address, the amount of money paid for each item, the make and model of any phones over \$100, and the sales tax. See 6

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<sup>13</sup> Plaintiffs do not seek disgorgement from those Defendants charged with only one CPL violation.

RCNY § 5-32 (the “Receipt Law”). Again and again, Metro Stores failed to comply with these simple requirements.

130. At least 16 times, Defendants failed to provide a receipt at all. Several times, consumers were told they could not have a receipt because the Metro Store’s printer was broken. And sometimes Metro Store employees became adversarial when asked for a receipt. For example, defendant Freecell Wholesale Phones Inc. responded to one consumer by saying “don’t fuck with me right now” and “get the fuck out of the store.”

131. Defendant Supreme Telecommunications Inc. refused to give Nikolett Peto a receipt – although it did provide an incomplete monthly service contract in Spanish, a language that Ms. Peto does not speak. When Ms. Peto was able to access the receipt later (by returning to the Metro Store when someone else was working) she discovered that she had been overcharged on taxes and enrolled in a \$40 monthly wireless plan, instead of the \$30 plan she had requested.

132. Metro Stores have also violated the receipt law by: incorrectly recording or failing to include business address and telephone information; failing to itemize purchases; and failing to include the makes and models of purchases over \$100.

133. T-Mobile, MetroPCS NY, and certain Dealer Defendants violated the law at least 25 times by failing to include legally required information on consumer receipts or failing to provide any receipt at all (“Receipt Law Violations”). DCA seeks penalties for each of the Receipt Law Violations identified in Schedule D, and for any additional Receipt Law Violations discovered before trial.



**FIRST CAUSE OF ACTION**

*Engaging in deceptive trade practices in violation of NYC Code § 20-700*

*T-Mobile: **at least 2,260 violations***

*MetroPCS NY: **at least 57 violations***

*M&H Wireless Inc.: **at least 4 violations***

*Cell Nation of 77 Inc., Metro Com 1 Inc.: **at least 3 violations***

*Freecell Wholesale Phones Inc., M&H Wireless II Inc., Metro Place Woodside, Inc.,*

*Metropolitan Wireless Anandpur Inc., PCS of Fordham Inc.: **at least 2 violations***

*2<sup>nd</sup> Ave Wireless Inc., 907 White Plains Road LLC, A2A Wireless of NY Corp., AYM Wireless Corp., Cell Nation of Babylon, Inc., Cellular Allstars Inc., E & S Products Inc., Elite Wireless Group NY LLC, Five Stars of Brooklyn VIII Inc., Flatlands Wireless Inc., Floraison, Inc., GAJ Communications, Inc., G&M Wireless Inc., H.V. Impex Inc., Jerome Ave Wireless Inc., KTMS Communications NYC Inc., Madison Mobile Inc., Metro Place of Brooklyn, Inc., MetroComm LTE LLC, Mobile 119 Inc., Stellar Wireless Retail, LLC, Talk A Lot LLC, United Wireless LLC, Wireless Broz Inc., & Wireless Sync of NYC LLC: **at least 1 violation***

134. NYC Code § 20-700 prohibits deceptive trade practices, including bars “any deceptive or unconscionable trade practice in the sale ... of any consumer goods or services[.]” NYC Code § 20-700. Deceptive practices include “representations that goods ... are original or new if they are deteriorated, altered, reconditioned, reclaimed, or secondhand” and “the use, in any oral or written representation, of exaggeration, innuendo, or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive[.]” NYC Code § 20-701(a).

135. Defendants violated NYC Code § 20-700 repeatedly and persistently.

136. Defendant T-Mobile violated NYC Code § 20-700 at least 1,096 times by committing 30 Day Guarantee Violations. T-Mobile is liable for penalties for each violation of \$350, or \$500 if the violation was knowing.

137. Defendant T-Mobile violated NYC Code § 20-700 at least 1,096 times by committing Virtual Chat Violations. T-Mobile is liable for penalties for each violation of \$350, or \$500 if the violation was knowing.

138. Defendants T-Mobile and MetroPCS NY violated NYC Code § 20-700 at least 22 times by committing Used Phone Deception Violations.<sup>14</sup> As detailed in Schedule A, 16 Dealer Defendants committed at least one such violation each. Defendants are liable for penalties for each violation of \$350, or \$500 if the violation was knowing. Those that committed more than one violation of the CPL are also liable for disgorgement of all revenues received from transactions involving Used Phone Deception Violations.

139. Defendants T-Mobile and MetroPCS NY violated NYC Code § 20-700 at least 12 times by committing Financing Violations. As detailed in Schedule B, seven Dealer Defendants committed at least one such violation each. Defendants are liable for penalties for each violation of \$350, or \$500 if the violation was knowing. Defendants that committed more than one violation of the CPL, including T-Mobile and MetroPCS NY, are also liable for disgorgement of all revenues received as a result of Financing Violations.

140. Defendants T-Mobile and MetroPCS NY violated NYC Code § 20-700 at least 22 times by committing Overcharging Violations. As detailed in Schedule C, fourteen Dealer Defendants committed at least one Overcharging Violation each. Defendants are liable for penalties for each Overcharging Violation of \$350, or \$500 if the violation was knowing. Defendants that committed more than one CPL, including T-Mobile and MetroPCS NY, violation are also liable for disgorgement of all revenues received as a result of Overcharging Violations.

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<sup>14</sup> These are also violations of 6 RCNY § 5-36(a) (“A seller of a used item must disclose clearly that the item is used, in any advertisement or sales transaction concerning the used item.”).

**SECOND CAUSE OF ACTION**

*Failing to properly document transactions in violation of 6 RCNY § 5-32*

*T-Mobile & MetroPCS NY: **at least 25 violations***

*A2A Wireless of NY Corp., Stellar Wireless Retail, LLC: **at least 2 violations***

*1930 Wireless Inc., 2<sup>nd</sup> Ave Wireless Inc., Allied Wireless Archer Inc., Broadway Metro Wireless, Inc., Elite Wireless Group NY LLC, Flatbush Cell Inc., Flatlands Wireless Inc., Floraison, Inc., Jerome Ave Wireless Inc., Metro 86, Inc., Metro Communications of Third Avenue 18 Inc., Metro Place of Brooklyn, Inc., MetroComm LTE LLC, Metropolitan Wireless Anandpur Inc., STP Knickerbocker 2 Inc., Suleiman Wireless, Inc., Superior Telecom, Inc., Violet Communications, Inc.: **at least 1 violation***

141. 6 RCNY § 5-32(b) provides that sellers of consumer goods and services must “offer a consumer a receipt for any retail purchase if the amount of the purchase is twenty dollars or more” and must “provide a consumer with a receipt upon request for any retail purchase if the amount of the purchase is between five and twenty dollars.” Rule 6 RCNY § 5-32(c) provides that a seller’s receipt must contain “the amount of money paid for each item,” “the total amount of money paid including a separate statement of tax,” “the date of the purchase,” and “the legal name and address of the seller in accordance with Section ‘Legal Name.’” For “a business that is not a corporation or a partnership,” “legal name” means “the name of at least one owner[.]” 6 RCNY § 5-01.

142. Defendants T-Mobile and MetroPCS NY violated section 5-32 at least 25 times. As detailed in Schedule D, 20 Dealer Defendants violated section 5-32 at least once each.

143. Defendants are liable for penalties of \$350 for each violation of section 5-32, or \$500 if the violation was knowing.

**RELIEF SOUGHT**

WHEREFORE, the Plaintiffs request that the Court:

A. Declare that Defendants were responsible for repeated, multiple or persistent deceptive conduct when they:

1. Sold used phones to consumers;

2. Deceived consumers about financing;
  3. Overcharged consumers; and,
  4. Failed to properly document transactions.
- B. Declare that T-Mobile was responsible for repeated, multiple or persistent deceptive conduct when it:
1. Advertised the “30 day guarantee” and
  2. Described T-Mobile’s return policy to consumers via the Virtual Chat Assistant.
- C. Find that Defendants committed the above violations knowingly.
- D. Find that Defendants T-Mobile and MetroPCS NY are jointly and several liable for all of the Dealer Defendants’ violations.
- E. Establish an account for consumer restitution (the “Account”) as described in NYC Code § 20-703(c) and CPLR 2601, to be structured and funded according to the following orders.
1. Order Defendants to pay all monies that it received from sales of used phones within the last three years.
  2. Order Defendants to pay all monies that it received from Financing Companies for transactions that involved Financing Deception.
  3. Order T-Mobile to pay all monies that it received from consumers who tried to reverse their transaction within 30 days but were denied.
  4. Order Defendants to pay all monies that it received as a result of overcharging consumers within the last three years.
- F. Order Defendants to pay the City the cost of DCA’s investigation and prosecution of this action, and to be jointly and severally liable for this cost.

G. Order Defendants to pay civil penalties as follows, with joint and several liability for each penalty.

1. \$350 for each time it committed a Used Phone Deception Violation, or \$500 if the violation was knowing.
2. \$350 for each time it committed a Financing Deception Violation, or \$500 if the violation was knowing.
3. \$350 for each time it committed a Used Phone Deception Violation, or \$500 if the violation was knowing.
4. \$350 for each time that Defendants overcharged NYC consumers, or \$500 if the violation was knowing.
5. \$350 for each time that Defendants committed a Receipt Law Violation.

H. Order T-Mobile to \$350 (or \$500 if the violation was knowing) for each page of the Metro Website that displayed the “30 day guarantee” during the last three years, with one penalty assessed for each day that the respective pages were published.

I. Order T-Mobile to pay \$350 for each Virtual Chat Violation, or \$500 if the violation was knowing.

J. Notify the relevant Financing Companies and all major credit bureaus that the contracts described in Schedule B were fraudulently arranged by Defendants.

K. Enjoin Defendants from engaging in the following conduct:


1. Deceiving consumers about financing, e-signing consumers’ names for them, or presenting a contract for e-signature without first showing the consumer the full contract.
2. Using the phrase “30 day guarantee.”

3. Omitting material conditions in representations by the Virtual Chat Assistant.
4. Describing any charge as “tax” if it is not legally collectible as tax by any government agency.
5. Charging any amount that contradicts posted or advertised prices, or is not disclosed anywhere besides the receipt.
6. Conducting business without the means and/or intent to provide receipts to all consumers.
7. Issuing receipts that do not comply with 6 RCNY § 5-32.

L. Award Plaintiffs such other and further relief that it deems just.

Dated: New York, NY  
September 4, 2019

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**Schedule A: Used Phone Deception**

A Metro Store sold a used phone to each of the consumers listed. Each name represents one violation of NYC Code § 20-700.

Consumer	Metro Store Address <i>All are in NY</i>	Metro Store Owner
Letisha Archer	2419 2 <sup>nd</sup> Ave., New York	E & S Products Inc.
Magaly Chavez	Unknown	Unknown
Wilmar Chavez	6101 Woodside Ave., Woodside	Metro Place Woodside, Inc. <sup>D</sup>
Angel De Paula de la Cruz	1407 St. Nicholas Ave., New York	Metro Com 1 Inc. <sup>D</sup>
Stacey Defreitas	134-24 Guy R. Brewer Blvd., Jamaica	H.V. Impex Inc.
Yamilca Del Giudice	83 W. Kingsbridge Rd., Bronx	MetroComm LTE LLC <sup>D</sup>
Murat Eskcoela	39-24 Queens Blvd., Sunnyside	M&H Wireless Inc. <sup>D</sup>
Ashley Flores	723 Morris Park Ave., Bronx	Talk A Lot LLC
Audace Tiffany Garner	87-86 Parsons Blvd., Jamaica	Cell Nation of Babylon, Inc.
Mario Gil	6101 Woodside Ave., Woodside	Metro Place Woodside, Inc. <sup>D</sup>
Kathy Johnson	192 Bay St., Staten Island	Wireless Broz Inc.
Alec Knipe	4627A Greenpoint Ave., Sunnyside	M&H Wireless II Inc. <sup>D</sup>
Karla Martinez	76-15 Roosevelt Ave., Jackson Heights	Cell Nation of 77 Inc. <sup>D</sup>
Mustapha Mermache	39-24 Queens Blvd. Sunnyside	M&H Wireless Inc. <sup>D</sup>
Bianca Moncion	1110 Pennsylvania Ave., Brooklyn	Stellar Wireless Retail, LLC <sup>D</sup>
Henry Moreno	3358 Fulton St., Brooklyn	Metro Place of Brooklyn, Inc. <sup>D</sup>
Katherin Rodriguez	76-15 Roosevelt Ave., Jackson Heights	Cell Nation of 77 Inc. <sup>D</sup>
Luis Rosario	5416 5 <sup>th</sup> Ave., Brooklyn	A2A Wireless of NY Corp. <sup>D</sup>
Jaspreet Singh	39-24 Queens Blvd., Sunnyside	M&H Wireless Inc. <sup>D</sup>
Aydez Valdez	379 E. Fordham Rd., Bronx	PCS of Fordham Inc. <sup>D</sup>
Eliberto Garcia Vergara	119-18 Jamaica Ave., Staten Island	Mobile 119 Inc.

Plaintiffs seek to hold T-Mobile and MetroPCS NY jointly and severally liable for each violation identified in Schedule A, in addition to any entity identified as “Metro Store Owner.” Plaintiffs seek disgorgement from T-Mobile and MetroPCS NY for each violation.

<sup>D</sup> indicates that Plaintiffs seek disgorgement from the Dealer Defendant.

**Schedule B: Financing Violations**

Consumer	Metro Store Address	Metro Store Owner
Betty Grace Ali	105-12 Rockaway Blvd., Ozone Park	Elite Wireless Group NY LLC <sup>D</sup>
Melvin Bell	158 W. 125 <sup>th</sup> St., New York	MetroPCS NY
Donna Detton	371 Mother Gaston Blvd., Brooklyn	Five Stars of Brooklyn VIII Inc.
Ruth Dickson	Unknown	Unknown
Doris Harris	1407 St. Nicholas Ave., New York	Metro Com 1 Inc. <sup>D</sup>
Jovanny Martinez	3544 Broadway, New York	KTMS Communications NYC Inc.
Karla Martinez	76-15 Roosevelt Ave., Jackson Heights	Cell Nation of 77 Inc. <sup>D</sup>
Isabel Montero	Unknown	Unknown
Yvonne Schirkonyer	369 Mother Gaston Blvd., Brooklyn	Unknown
Jose Torres	1407 St. Nicholas Ave., New York	Metro Com 1 Inc. <sup>D</sup>
Delia Vargas	39-24 Queens Blvd., Sunnyside	M&H Wireless Inc. <sup>D</sup>
Vashti Anais Wagner	2265 Jerome Ave., Bronx	Metropolitan Wireless Anandpur Inc. <sup>D</sup>

Plaintiffs seek to hold T-Mobile and MetroPCS NY jointly and severally liable for each violation identified in Schedule B, in addition to any entity identified as “Metro Store Owner.” Plaintiffs seek disgorgement from T-Mobile and MetroPCS NY for each violation.

<sup>D</sup> indicates that Plaintiffs seek disgorgement from the Dealer Defendant.



**Schedule C: Overcharging Violations**

A Metro Store overcharged each of the consumers listed. Each consumer represents one violation of NYC Code § 20-700.

Consumer	Amount of Overcharge	Metro Store Address	Metro Store Owner
Gustavo Canepa	\$20.00	3560 Nostrand Ave., Brooklyn	Wireless Sync of NYC LLC
Latoya Desselle	\$6.21	3201A White Plains Rd., Bronx	United Wireless LLC
Alec Knipe	\$80.00	4627A Greenpoint Ave., Sunnyside	M&H Wireless II Inc. <sup>D</sup>
Miguel Leal	\$28.87	90-13 31 <sup>st</sup> Ave., East Elmhurst	Cellular Allstars Inc.
Garland McKiver	\$5.00	197D Madison St., New York	Madison Mobile Inc.
Kamran Shah	\$44.88	819 Forest Ave., Staten Island	AYM Wireless Corp.
Yasmin Tillery	\$19.08	907 White Plains Rd., Bronx	907 White Plains Road LLC
Freddy Norberto Toribio	\$30.00*	83-01 Roosevelt Ave., Jackson Heights	MetroPCS NY
Vashti Anais Wagner	\$718.76**	2265 Jerome Ave., Bronx	Metropolitan Wireless Anandpur Inc. <sup>D</sup>
Kim Yunjye	\$150.00	Unknown	Unknown
Unknown (5/2/19)	\$2.28	309 E. Fordham Rd., Bronx	MetroPCS NY
Unknown (5/3/19)	\$3.03	158 W. 125 <sup>th</sup> St., New York	MetroPCS NY
Unknown (5/3/19)	\$2.28	2040 Forest Ave., Staten Island	MetroPCS NY
Unknown (5/6/19)	\$5.68	516 86 <sup>th</sup> St., Brooklyn	G&M Wireless Inc.
Unknown (5/9/19)	\$2.28	769 Broadway, Brooklyn	MetroPCS NY
Unknown (5/9/19)	\$2.28	1556 Flatbush Ave., Brooklyn	MetroPCS NY
Unknown (5/9/19)	\$2.28	5100 Kings Plaza, Brooklyn	MetroPCS NY
Unknown (5/13/19)	\$3.03	523 Fulton St., Brooklyn	MetroPCS NY
Unknown (5/20/19)	\$38.27	142 W. 32 <sup>nd</sup> St., New York	GAJ Communications, Inc.
Unknown (6/4/19)	\$101.25	1222 Liberty Ave., Brooklyn	Freecell Wholesale Phones Inc.
Unknown (6/6/19)	\$83.03	1209 Jerome Ave., Bronx	Jerome Ave Wireless Inc. <sup>D</sup>
Unknown (6/10/19)	\$8.78	377 E. Fordham Rd., Bronx	PCS of Fordham Inc. <sup>D</sup>
Unknown (6/24/19)	\$85.01	7909 Flatlands, Brooklyn	Flatlands Wireless Inc. <sup>D</sup>

\*Was refunded.

\*\*Includes phone mark-ups (\$270) and a “tax” (\$134) that were refunded; does not include costs related to the financing contract (\$721.30).

Plaintiffs seek to hold T-Mobile and MetroPCS NY jointly and severally liable for each violation identified in Schedule C, in addition to any entity identified as “Metro Store Owner.” Plaintiffs seek disgorgement from T-Mobile and MetroPCS NY for each violation.

<sup>D</sup> indicates that Plaintiffs seek disgorgement from the Dealer Defendant.

### Schedule D: Receipt Law Violations

#### D.1: Defective Receipts

A Metro Store provided a defective receipt to each of the consumers listed. Each consumer represents one violation of NYC Code § 20-700.

Consumer	Metro Store Address	Metro Store Owner
Marie Banks	185 Malcolm X Blvd., Brooklyn	Superior Telecom, Inc.
Taniesha Anderson	7909 Flatlands, Brooklyn	Flatlands Wireless Inc.
Maria Feliz	5416 5 <sup>th</sup> Ave., Brooklyn	A2A Wireless of NY Corp.
Yamilca Del Giudice	83 W. Kingsbridge Rd., Bronx	MetroComm LTE LLC
Larry Gurley	3358 Fulton St., Brooklyn	Metro Place of Brooklyn, Inc.
Darline Mondesir	45 Newkirk Plaza, Brooklyn	Stellar Wireless Retail, LLC
David Paris	5416 5 <sup>th</sup> Ave., Brooklyn	A2A Wireless of NY Corp.
Vashti Anais Wagner	2265 Jerome Ave., Bronx	Metropolitan Wireless Anandpur Inc.
Unknown (6/6/19)	1209 Jerome Ave., Bronx	Jerome Ave Wireless Inc.

(Continued.)

## D.2: Failure to Provide Receipt

A Metro Store failed to provide a receipt to each of the consumers listed that reflected the amount paid. Each consumer represents one violation of NYC Code § 20-700.

Consumer	Metro Store Address	Metro Store Owner
Ilya Babakhanov	97-14 Queens Blvd., Rego Park	Floraison, Inc.
Zoraida Daley	1175 Sutter Ave., Brooklyn	Elite Wireless Group NY LLC
Anda Donohue	5585 Broadway, Bronx	Broadway Metro Wireless, Inc.
Allayne Ebanks	Unknown	
Giovanni Feliciano	1807 Archer St., Bronx	Allied Wireless Archer Inc.
Tanisha Hocks	537 Flatbush Ave., Brooklyn	Flatbush Cell Inc.
Jerry Jones	Unknown	
Joseph Latouro	Unknown	
Myrna Lazcano	1500 Amsterdam Ave., New York	2 <sup>nd</sup> Ave Wireless Inc.
Robin Mercado	86-24 Rockaway Beach Blvd., Far Rockaway	Suleiman Wireless, Inc.
Michael Muchnik	1979 86 St., Brooklyn	Metro 86, Inc.
Maria Pavilla	481 Knickerbocker Ave., Brooklyn	STP Knickerbocker 2 Inc.
Sierra Pedro	5524 Myrtle Ave., Brooklyn	Metro Communications of Third Avenue 18 Inc.
Nikolett Peto	54-16 31 <sup>st</sup> Ave., Woodside	Violet Communications, Inc.
Alfa Soto	1930 3 <sup>rd</sup> Ave., New York	1930 Wireless Inc.
Anthony Williams	1883 Rockaway Parkway, Brooklyn	Stellar Wireless Retail, LLC

Plaintiffs seek to hold T-Mobile and MetroPCS NY jointly and severally liable for each violation identified in Schedule D, in addition to any entity identified as “Metro Store Owner.”

VERIFICATION

TAMALA BOYD, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under penalties of perjury, pursuant to CPLR 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an Officer of the City of New York, a plaintiff in the within action. I have read the foregoing complaint and know the contents thereof. I believe the same to be true upon information and belief.

The reason why this verification is not made by the City of New York is that it is a corporation. My belief as to all matters is based upon information obtained from various departments of the city government, from statements made to me by certain officers or agents of the City of New York, and from statements, affidavits or affirmations of other persons.

Dated: New York, NY  
Date: Sept. 4, 2019

  
TAMALA BOYD