

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

DANE COUNTY

STATE OF WISCONSIN  
17 W. Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857,

**FILED**

**DEC 19 2014**

DANE COUNTY CIRCUIT COURT

Plaintiff,

v.

Case No. 14-CX-55

Complex Forfeiture: 30109

T-MOBILE USA, INC.,  
a Delaware Corporation,  
12920 SE 38<sup>th</sup> Street  
Bellevue, Washington 98006,

Defendant.

THIS IS AN AUTHENTICATED COPY OF THE  
ORIGINAL DOCUMENT FILED WITH THE DANE  
COUNTY CLERK OF CIRCUIT COURT.

**SUMMONS**

CARLO ESQUEDA  
CLERK OF CIRCUIT COURT

THE STATE OF WISCONSIN,

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

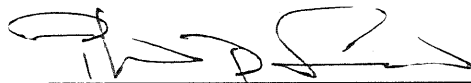
Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Circuit Court,

215 South Hamilton Street, Room 1000, Madison, Wisconsin 53703, and to Phillip D. Ferris, Assistant Attorney General, Plaintiff's attorney, whose address is Wisconsin Department of Justice, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 19th day of December, 2014.

Respectfully submitted,  
J.B. VAN HOLLEN  
Attorney General



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PHILLIP D. FERRIS  
Assistant Attorney General  
State Bar No.: 1000138  
Attorneys for State of Wisconsin

Wisconsin Department of Justice  
17 West Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-7971, Fax: (608) 267-2778

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**COMPLAINT**

CARLO ESQUEDA  
CLERK OF CIRCUIT COURT

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The State of Wisconsin (hereinafter the "State" or "Plaintiff"), by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Phillip D. Ferris, on behalf of the Wisconsin Department of Justice and the Wisconsin Department of Agriculture, Trade and Consumer Protection, brings this action against Defendant T-Mobile USA, Inc. (hereinafter "Defendant" or "T-Mobile") and alleges as follows:

**JURISDICTION AND VENUE**

1. This action is brought pursuant to Wis. Stat. §§ 100.18(11)(d), 100.195(5m)(c) and 100.20(6) to enjoin and restrain violations of Wis. Stat. §§ 100.18(1) and 100.195(2)(a) and Wis. Admin. Code § ATPC 123.06(1) and to obtain appropriate remedies for those violations.

2. Venue for this action properly lies in Dane County, Wisconsin, pursuant to Wis. Stat. § 801.50(2)(c) because T-Mobile USA, Inc. has transacted substantial business in Dane County.

### **PARTIES**

3. Plaintiff, State of Wisconsin, is a sovereign State of the United States of America, with its principal office located at the State Capitol in Madison, Wisconsin.

4. Defendant, T-Mobile USA, Inc., is a Delaware corporation, with a principal place of business located at 12920 SE 38<sup>th</sup> Street, Bellevue, Washington 98006.

### **BACKGROUND**

5. Defendant is a nationwide mobile phone carrier.

6. Until at least sometime in late 2013, in addition to charging for phone services it provides directly, Defendant also charged many of its consumer customers for other services offered by third-party merchants which were unrelated to the mobile telephone services T-Mobile provides. These charges involved monthly subscription fees, typically \$9.99 per month, for content such as ringtones and wallpaper, and for third-party “premium” text message subscription services such as horoscopes, trivia, and sports scores (“Third-Party Services”).

7. Upon information and belief, in numerous instances, Defendant has placed charges on Wisconsin consumers’ mobile telephone bills for Third-Party Services without the consumer’s knowledge, which services those consumers did not purchase, order or authorize, a practice known as cramming.

8. Upon information and belief, many consumers are unaware that their mobile telephones can be used to make payments for Third-Party Services, and consumers often pay

unauthorized third-party charges without knowing that the charges have been placed on their mobile telephone bills.

9. With respect to charges billed on behalf of Third-Party Service merchants, Defendant did not obtain authorization from the consumers directly before charging them for those Third-Party Services. Instead, the third-party merchants or billing intermediaries purportedly have obtained such authorization.

10. Upon information and belief, in many cases the third-party merchants or billing intermediaries failed to obtain valid authorization from Wisconsin consumers.

11. Numerous consumers have complained to Defendant, and, upon information and belief, a large number of consumers requested or received refunds for prior payments for such charges.

12. Defendant received a portion of each Third-Party Service charge paid by its consumer customers.

## **VIOLATIONS**

### **Count 1**

#### **Fraudulent Representations, Wis. Stat. § 100.18(1)**

13. Plaintiff realleges all preceding paragraphs of the Complaint and incorporates them herein.

14. Wis. Stat. § 100.18(1) prohibits making statements or representations to the public that are “untrue, deceptive or misleading” in connection with the sale of goods or services – including statements that appear in bills.

15. Any unauthorized charge for a Third-Party Service which Defendant has placed on a bill to a Wisconsin mobile telephone subscriber constitutes a violation of Wis. Stat. § 100.18(1) because it is an untrue, deceptive or misleading statement or representation that the

telephone subscriber has entered into an agreement for the Third-Party Services being billed and promotes the sale or consumption of the Third-Party Service being billed.

**Count 2**

**Unfair Billing for Consumer Goods or Services, Wis. Stat. § 100.195(2)(a)**

16. Plaintiff realleges all preceding paragraphs of the Complaint and incorporates them herein.

17. The Third-Party Services that were being billed by Defendant on Wisconsin subscribers' mobile telephone bills are "consumer goods or services" as that term is defined in Wis. Stat. § 100.195(1)(c).

18. Defendant is a "seller" as that term is defined in Wis. Stat. § 100.195(1)(f).

19. Under Wis. Stat. § 100.195(2)(a), no seller may bill a consumer for consumer goods or services that the consumer has not agreed to purchase.

20. As alleged above, Defendant has included in its mobile telephone bills to Wisconsin consumers charges for consumer goods or services from third-party merchants that the Wisconsin consumers have not agreed to purchase. Each such bill violates Wis. Stat. § 100.195(2)(a).

**Count 3**

**Wis. Admin. Code § ATCP 123.06(1)**

21. Plaintiff realleges all preceding paragraphs of the Complaint and incorporates them herein.

22. The Third-Party Services that were being billed by Defendant on Wisconsin subscribers' mobile telephone bills are "electronic communication services" as that term is defined by Wis. Admin. Code § ATCP 123.01(5).

23. The Third-Party Services that were being billed by Defendant on Wisconsin subscribers' mobile telephone bills are also "service offerings" as that term is defined by Wis. Admin. Code § ATCP 123.01(10).

24. Defendant is a "provider" as that term is defined by Wis. Admin. Code § ATCP 123.01(9).

25. Pursuant to Wis. Admin. Code § ATCP 123.06(1) no provider may bill a consumer for a service offering that the consumer has not affirmatively ordered.

26. Any bill from Defendant sent to a Wisconsin consumer that contained a charge for Third-Party Services from a third-party merchant that the Wisconsin consumer did not affirmatively order or agree to purchase violates Wis. Admin. Code § ATCP 123.06(1).

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff, State of Wisconsin, requests this Court to enter judgment against Defendant, T-Mobile USA, Inc., as follows:

1. Permanently enjoining T-Mobile USA, Inc. from all further violations of Wis. Stat. §§ 100.18(1), 100.195(2)(a) and Wis. Admin. Code § ATCP 123.06(1), pursuant to Wis. Stat. §§ 100.18(11)(d), 100.195(5m)(c) and 100.20(6);

2. Imposing appropriate forfeitures against T-Mobile USA, Inc. for violations of Wis. Stat. § 100.18(1) in an amount of not less than \$50 nor more than \$200 per violation pursuant to Wis. Stat. § 100.26(4);

3. Imposing appropriate forfeitures against T-Mobile USA, Inc. for violations of Wis. Stat. § 100.195(2)(a) in an amount of not less than \$100 nor more than \$10,000 per violation pursuant to Wis. Stat. § 100.195(5m)(d);

4. Imposing appropriate forfeitures against T-Mobile USA, Inc. for violations of Wis. Admin. Code § ATCP 123.06(1) in the amount of not less than \$100 nor more than \$10,000 per violation pursuant to Wis. Stat. § 100.26(6);

5. Ordering T-Mobile USA, Inc. to pay full restitution to all affected Wisconsin consumers suffering pecuniary loss because of its violations of Wis. Stat. §§ 100.18(1), 100.195(2)(a) and Wis. Admin. Code § ATCP 123.06(1) pursuant to Wis. Stat. §§ 100.18(11)(d), 100.195(5m)(c) and 100.20(6);

6. Awarding against T-Mobile USA, Inc. and in favor of the State the reasonable and necessary costs and expenses of investigation and prosecution, including attorneys fees, relating to this action pursuant to Wis. Stat. § 100.263;

7. Awarding the State its costs of this action; and

8. Providing such other and further relief as justice and equity may require.

Dated this 19<sup>th</sup> day of December, 2014.

Respectfully submitted,

J.B. VAN HOLLEN  
Attorney General



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PHILLIP D. FERRIS  
Assistant Attorney General  
State Bar #1000138  
Attorneys for State of Wisconsin

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