



## CLIENT ALERT

October 18, 2021

### OVED & OVED VICTORY OVER APPLE AND T-MOBILE IN CLASS ACTION LAWSUIT FEATURED ON COVER OF NEW YORK LAW JOURNAL

Oved & Oved was featured on the cover of the New York Law Journal for successfully defeating Apple and T-Mobile's motions to compel arbitration in a punitive class action accusing the tech giants of deceptive practices that allowed third parties unauthorized access to customers' private communications. Read the article here:

# New York Law Journal



Apple Store inside the Towson Town Center shopping mall in Baltimore. Sept. 5, 2020. Photo: Diego M. Radzinski/ALM

#### NEWS

## Apple, T-Mobile Lose Renewed Bid for Arbitration in Consumer Privacy Lawsuit

U.S. District Judge Lorna G. Schofield ruled that the tech and telecommunications companies could not seize on a newly-discovered document to force the claims to be resolved in private.

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Tom McParland [↗](#)

A Manhattan federal judge has denied Apple's renewed attempt to force arbitration in a proposed class action accusing the tech giant of concealing a flaw in its operating system.

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U.S. District Judge Lorna G. Schofield of the Southern District of New York ruled Wednesday that Apple and co-defendant T-Mobile Inc. could not seize on a newly-discovered document to force the claims to be resolved in private.

The ruling came as a win for plaintiffs Tigran Ohanian and Regge Lopez and their Oved & Oved attorneys, who claim that Apple's operating-system flaw, combined with T-Mobile's practice of recycling old phone numbers, gave other customers unauthorized access to customers' private communications.

Apple and T-Mobile are represented in the case by O'Melveny & Myers and Alston & Bird, respectively.

Apple and T-Mobile last year both filed motions to send the lawsuit to arbitration, where costs to the proposed class representatives could be higher and the companies could have a say in selecting judges tasked with entering a final ruling.

In April, Schofield blocked arbitration on Lopez' claims, but reserved decision with regard to Ohanian, pending a determination on whether he had actually agreed to arbitrate with T-Mobile when he activated a prepaid line of service in 2016.

Both companies filed renewed motions in July, after T-Mobile said it had found a "prepaid confirmation form" that put Ohanian on notice that he was agreeing to an arbitration clause contained in its terms and conditions.

Apple, meanwhile, argued that it too was able to enforce the broad provision because it "explicitly includes and applies" to claims against third parties that have been sued in the same proceeding as T-Mobile.

Ohanian, whose attorneys decried the move as a "nearly identical regurgitation" of Apple's original motion, denied receiving the form or any other information indicating that he was accepting T-Mobile's terms at the time of purchase.

Schofield said in August that the case presented a "triable issue" and scheduled an evidentiary hearing Wednesday, which included five exhibits and testimony from Ohanian.

In her ruling, Schofield said that T-Mobile did not show "by a preponderance of the evidence that it provided Ohanian the prepaid confirmation form, which contains the arbitration agreement." That finding, likewise, prevented Apple's own request for arbitration.

"Accordingly, T-Mobile did not meet its burden of proving an enforceable agreement between Ohanian and T-Mobile," the judge said. "It is hereby ordered that the motions to compel arbitration brought by T-Mobile and Apple Inc."

The ruling, which was issued from the bench on Wednesday, was outlined in a three-page order posted to the docket Thursday afternoon.

Class counsel, Terrence Oved, Darren Oved, Aaron Solomon and Chris Rados of Oved & Oved, said in a statement that "from the outset, both Apple and T-Mobile have gone to great lengths to avoid the courtroom."

"Our client is pleased that the court rejected their renewed efforts to do so," the attorneys said. "With Apple and T-Mobile's latest motions denied, we look forward to litigating the significant claims raised in this putative class action."

Lawyers for Apple and T-Mobile did not immediately respond to requests for comment.

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