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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JARED PECK, individually and on behalf
of all the members of the class of
persons similarly situated,

Plaintiff,

v.

CINGULAR WIRELESS LLC, a Delaware
limited liability company, d/b/a Cingular
Wireless, NEW CINGULAR WIRELESS
SERVICES, INC., a Delaware
corporation, d/b/a AT&T Wireless, NEW
CINGULAR WIRELESS SERVICES
PURCHASING COMPANY, L.P., a
Delaware limited partnership, d/b/a
Cingular Wireless, and NEW CINGULAR
WIRELESS PCS, LLC, a Delaware
limited liability company, d/b/a Cingular
Wireless,

Defendants.

CLASS ACTION

NO
06-2-39588-3 SEA

COMPLAINT FOR BREACH OF
CONTRACT AND VIOLATION OF
CONSUMER PROTECTION ACT

COME NOW Plaintiff, Jared Peck, individually and on behalf of all
members of the class of persons similarly situated and for cause of action
against Defendants, Cingular Wireless, LLC, New Cingular Wireless Services
Purchasing Company, L.P., and New Cingular Wireless PCS, LLC (collectively
"Cingular"), alleges as follows:

COMPLAINT - 1

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I. PARTIES

1.1 Plaintiff Jared Peck is a resident of King County, Washington. He is a former customer of Defendant Cingular. He was charged by Cingular and paid to Cingular a "State B and O Surcharge" on his monthly bill. He seeks to represent a class of all current or past Washington state cellular phone customers of Defendant Cingular who were charged and paid a Cingular "State B and O Surcharge" as an additional term or condition of service.

1.2 Defendant Cingular provides cellular phone service in the State of Washington directly and through wholly owned subsidiary companies. One such wholly owned subsidiary is Defendant New Cingular Wireless Services, Inc., which has its principal place of business in King County, Washington.

II. PLAINTIFFS' ALLEGATIONS

2.1 Plaintiff Peck became a consumer of Cingular's wireless services in January 2006.

2.2 When Mr. Peck became a consumer of Cingular's services in January 2006, Cingular used a standard form contract for service with Washington consumers which was titled and/or referred to by Cingular as the "Cingular Terms and Conditions." Cingular also used a standard form contract for service which was titled "Cingular Wireless Terms of Service." The two form contracts, i.e. the "Cingular Terms and Conditions" and the "Cingular Wireless Terms of Service," were identical in all material respects.

2.3 Cingular did not send or give Mr. Peck either a "Cingular Terms and Conditions" contract or a "Cingular Wireless Terms of Service" contract when he became a consumer of Cingular's services. Cingular did not send or

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COMPLAINT - 2

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1 give Mr. Peck any form of contract for his services when he became a
2 consumer of Cingular services in January 2006.

3 2.4 The contract for service that was used by Cingular with
4 Washington consumers in January 2006 has a section setting out charges for
5 service. A "State B and O Surcharge" was not one of the charges for service
6 stated in the "Cingular Terms and Conditions," or in the "Cingular Terms of
7 Service" agreement. The words "State B and O Surcharge" do not appear
8 anywhere in either the "Cingular Terms and Conditions," or in the "Cingular
9 Terms of Service" agreement. A "State B and O Surcharge" was not a charge
10 stated in the Cingular "Terms and Conditions" or in the "Cingular Wireless
11 Terms of Service" from December 31, 2000 to the date of this Complaint.

12 2.5 A "gross receipts surcharge" was not a charge for service stated
13 in the "Cingular Terms and Conditions" or in the "Cingular Terms of Service"
14 agreement in January 2006. The words "gross receipts surcharge" do not
15 appear anywhere in either the "Cingular Terms and Conditions," or in the
16 "Cingular Terms of Service" agreement. A "gross receipts surcharge" was not a
17 charge for service stated in the "Cingular Terms and Conditions" or in the
18 "Cingular Terms of Service" agreement used in Washington state from
19 December 31, 2000 to the date of this Complaint.

20 2.6 When Mr. Peck became a Cingular consumer in January 2006,
21 he was sent a Cingular "Customary Service Summary" ["CSS"]. The CSS is a
22 form used by Cingular in the State of Washington to communicate with
23 consumers and has been used by Cingular from at least December 31, 2002 to
24 present. The CSS received by Mr. Peck contained a section setting out

1 charges for his service. The CSS set out the rate for service, which was
2 separate and apart from the other charges, terms and/or conditions of service.
3 The CSS did not state that a "State B and O Surcharge" was a charge, term
4 and/or condition of service.

5 2.7 In January 2006, Cingular advertised calling plans in the state of
6 Washington at set rates per month. One such plan was named or referred to in
7 whole or in part by Cingular as the "Nation 450 Roll." When Mr. Peck became
8 a consumer of Cingular's service in January 2006, he purchased service under
9 the "Nation 450 Roll" plan. The monthly rate for this plan was advertised by
10 Cingular to Mr. Peck as "\$39.99" per month. In its advertising for this plan in
11 the state of Washington, Cingular did not state that payment of a "State B and
12 O Surcharge" was another term or condition of service in addition to the
13 monthly calling plan rate for service.

14 2.8 Cingular billed Mr. Peck a "State B and O Surcharge" as an
15 additional term or condition of service that was separate and apart from, and in
16 addition to, the calling plan rate for service.

17 2.9 Cingular presented the "State B and O Surcharge" on its bill as
18 an "Other Charge" separate and apart from its "Rate Plan" and charges for
19 "Other Services."

20 2.10 Cingular placed the "State B and O Surcharge" on the bill in a
21 section immediately adjacent to "Government Fees & Taxes" in a section that
22 includes regulatory, federal, and utility charges.

23 2.11 Mr. Peck paid a "State B and O Surcharge" on his bill for January
24 2006 of \$0.31.

COMPLAINT - 4

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1 2.12 In its monthly billing statements to Mr. Peck and all other
2 Washington consumers, Cingular sets out a "General Information" section. In
3 the "General Information" section of its billing statements in January 2006,
4 Cingular provided consumers with a description of and an explanation for the
5 amount of the late charge the consumer would have to pay if the amount of the
6 bill were not paid on time. From at least December 31, 2002 to the date of this
7 Complaint, Cingular provided some form of description or explanation of the
8 late charge in every monthly billing statement for all consumers in Washington.
9 Cingular did not provide a description of or explanation for the "State B and O
10 Surcharge" in the "General Information" section or any other section of the
11 January 2006 billing statement sent to Mr. Peck and other Washington
12 consumers. From at least, December 31, 2002 to the date of this Complaint,
13 Cingular has not provided either a description of or an explanation for the
14 "State B and O Surcharge."

15 2.13 In the discussion of late payment charges in the "General
16 Information" section of its January 2006 billing statements, Cingular states that
17 the late payment fee will be calculated differently and/or can vary depending on
18 the state in which the consumer resides from a flat rate of \$5.00 in some states
19 or 1.5% of the balance in other states. The late fee Cingular charged
20 consumers in January 2006 was a cost of service to the consumer who did not
21 pay the full amount of the monthly bill by the due date. The amount of late fee
22 Cingular charged in January 2006 was regulated by various states. Cingular
23 adheres to the regulation of its late fee payment by states. From at least
24 December 31, 2000 to the date of this Complaint, the amount of late fee

1 Cingular charged its consumers was regulated by the states. Cingular adhered
2 to the state regulation of its late fee charge from at least December 31, 2000 to
3 the date of this Complaint.

4 2.14 In January 2006, the Cingular "Terms and Conditions" agreement
5 and "Cingular Wireless Terms of Service" agreement used with consumers in
6 Washington contained a section titled or referred to as "Changes to Terms and
7 Rates." In the section, Cingular differentiated between the "rates" for service
8 and other "terms," "conditions," "fees," "expenses," or "charges" regarding the
9 consumer's service. The "State B and O Surcharge" does not fall within the
10 term "rates" under this section. From at least December 31, 2002, the section
11 of the Cingular "Terms and Conditions" agreement and the "Cingular Wireless
12 Terms of Service" agreement that describes changes to the terms of the
13 agreement has contained language which separates "rates" from "charges" or
14 "surcharges," and has used the term "rate" or "rates" as a separate term from
15 "charges" or "surcharges."

16 2.15 Since at least December 31, 2002, Cingular has not given
17 Washington consumers, including Mr. Peck, advance notice of any change
18 made to the "State B and O Surcharge."

19 2.16 Cingular failed to adequately disclose to Mr. Peck and other
20 Washington consumers in its advertising for calling plans, in its CSS, in its
21 "Terms and Conditions" agreement, in its "Cingular Wireless Terms of Service"
22 agreement, and its contracts that Cingular charges a "State B and O
23 Surcharge" as an additional term or condition of service beyond the rates for
24 service. Cingular's failure to adequately disclose to Mr. Peck and other

1 Washington consumers and subsequent billing of a "State B and O Surcharge"
2 is deceptive and/or unfair practice in violation of the Washington Consumer
3 Protection Act, RCW 19.86 et seq.

4 2.17 Cingular's charging and collecting of a "State B and O Surcharge"
5 from Mr. Peck and other Washington state customers breaches the terms of
6 the Cingular service agreement because the "State B and O Surcharge" is not
7 a term or condition of service set out in the contract for service.

8 2.18 Cingular's charging and collecting of a "State B and O Surcharge"
9 breaches the terms of the Cingular service agreement because Cingular did
10 not give consumers notice of changes to the "State B and O Surcharge."

11 2.19 Mr. Peck has been individually damaged by the above described
12 wrongful conduct of Defendant in an amount believed to be less than \$50.00.

13 2.20 Mr. Peck brings this action as a class action on behalf of all
14 Washington State Cingular customers for who have been charged and paid to
15 Cingular the "State B and O Surcharge."

16 2.21 Cingular discontinued charging the "State B and O Surcharge" in
17 February 2006 in response to Mr. Peck's lawsuit filed February 14, 2006
18 (Cause No. 06-2-05747-3 SEA).

19 III. PLAINTIFFS' CLASS ACTION ALLEGATIONS

20 3.1 Plaintiff Peck brings this action pursuant to Superior Court Civil
21 Rules 23(b)(1), (b)(2) and (b)(3) on behalf of the following class:

22 All current and former Washington state wireless service
23 customers of Cingular, who have been charged and paid to
24 Cingular a "State B and O Surcharge," except Defendants, any
entity in which Defendants have a controlling interest, any entity
which has a controlling interest in Defendants, Defendants' legal

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COMPLAINT - 7

597226.3/026064.00001

1 representative, assigns and successors, the judge to whom the
2 case is assigned, and any member of the judges' immediate
3 family.

4 Plaintiff Peck is a member of the above described class.

5 A. **Numerosity**

6 3.2 The class of Plaintiffs similarly situated is so numerous that
7 joinder of all members is impractical because there are believed to be at least
8 100,000 of members of the class located in all major cities and communities
9 across the state of Washington. The exact number of members of the class is
10 presently unknown to Plaintiff but may be easily determined from records
11 maintained by Defendant.

12 3.3 The class of plaintiffs similarly situated is unable to sue for judicial
13 relief because their individual claims are so small it would be economically
14 unfeasible to pursue litigation on an individual by individual basis.

15 B. **Common Questions of Law and Fact**

16 3.4 Plaintiff Peck's claims are identical to and thus typical of the
17 claims of the members of the proposed class. All class members assert that
18 Cingular's practice of failing to adequately disclose the "State B and O
19 Surcharge" before contracting with them and then including the charge on the
20 bill without notice and in a manner that suggests it is a tax or charge for service
21 owed by the customer constitutes an unfair practice under the Washington
22 CPA, and breaches the customer's service agreement.

23 3.5 The following facts are common to the class of Plaintiffs:

24 a. All class members have or have had service with Defendant

1 through a wireless service plan for a set monthly charge;

2 b. No advertising, service contract, or service summary provided by
3 Defendant to members of the class specifically disclosed a "State B and O
4 Surcharge."

5 c. All class members were charged by Defendant and paid a "State
6 B and O Surcharge" in addition to the calling plan rate for which they
7 contracted.

8 3.6 The following issues of law are common to all class members:

9 a. Does Defendant's practice of failing to disclose a "State B and O
10 Surcharge" in its advertising, service contracts, and service summaries
11 constitute an unfair consumer practice under RCW 19.86 et seq.?

12 b. Does Defendant's practice of including the "State B and O
13 Surcharge" on the bill to suggest it is a tax or charge for service owed by the
14 customer constitute an unfair practice under RCW 19.86 et seq.?

15 c. Does Defendant's practice of billing and collecting a "State B and
16 O Surcharge" in addition to the rate plan for which the customer has contracted
17 constitute a breach of the customer's service agreement?

18 d. Should the court enjoin defendant from further billing and
19 collecting the charge?

20 e. Should the court order a repayment of the improper charges to
21 customers?
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1 f. Is an award of exemplary damages under the Consumer
2 Protection Act of three times the amount of the customer's improperly paid
3 charges an appropriate remedy?

4 C. Superiority

5 3.7 Class action is the superior method for resolving this case for the
6 following reasons:

7 a. Because the issues of law and fact as stated above are identical
8 for all members of the class, failure to adjudicate those issues as a class action
9 could easily lead to inconsistent adjudications.

10 b. Adjudicating the same issues will prevent court congestion.

11 c. This action will achieve economies of time, effort, and expense,
12 and promote uniformity of decision as to persons similarly situated.

13 d. The size of the individual damages sustained by class members
14 makes it cost prohibitive to pursue the claims on an individual basis.

15 e. There are no unusual difficulties likely to be encountered in the
16 management of this litigation as a class action. The members of the class can
17 be easily determined from Defendant's records, and because Defendant's
18 practice of inadequately disclosing and charging the "State B and O Surcharge"
19 was applied to all consumer customers in Washington, individual identification
20 of class members is likely not necessary to obtain full reimbursement and relief
21 for all class members. Given the size of the individual damages claim, a class
22 action is the only feasible method by which this controversy may be resolved.

23 f. Notice to the class may be accomplished cheaply, efficiently, and
24 in a manner best designed to protect the due process rights of all class

1 members by means of written notices supplied as part of Defendant's billing
2 procedures for existing customers and in published notice for former
3 customers.

4 D. Adequacy of Representation

5 3.8 Plaintiff can and will fairly and adequately represent and protect
6 the interests of the class, as Plaintiff has no interests that conflict with or are
7 antagonistic to the interests of the class.

8 3.9 Plaintiff has retained competent and experienced legal counsel to
9 prosecute his individual claims and those of the class.

10 **IV. COUNT 1: BREACH OF CONTRACT**

11 4.1 Plaintiff and the members of the class re-allege each and every
12 allegation contained in Sections I through III above, and incorporate them
13 herein by reference.

14 4.2 Defendant breached the contract for service with Plaintiff and the
15 class members by billing and charging a "State B and O Surcharge" in addition
16 to the calling plan rate.

17 4.3 As a direct and proximate result of Defendant's breach of
18 contract, Plaintiff and the members of the class have suffered monetary
19 damages in an amount to be proven at the time of trial.

20 **V. COUNT II: VIOLATION OF CONSUMER PROTECTION ACT**

21 5.1 Plaintiff and the members of the class re-allege each and every
22 allegation contained in Sections I through IV above, and incorporate them
23 herein by reference.

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COMPLAINT - 11

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1 5.2 Defendant violated the Washington Consumer Protection Act,
2 RCW 19.86.010 et seq. by failing to disclose to Plaintiff and the class a "State
3 B and O Surcharge" and then charging and collecting the same in addition to
4 the agreed calling plan rate for service.

5 5.3 As a direct and proximate result of Defendant's violation of the
6 CPA, Plaintiff and the members of the class have suffered monetary damages
7 in an amount to be proven at the time of trial.

8 **VI. COUNT III. UNJUST ENRICHMENT**

9 6.1 As a result of Defendant's billing and charging of a line item
10 "State B and O Surcharge" that was not disclosed and was not in the contract
11 for service, Defendant has been unjustly enriched.

12 6.2 Defendant should repay Plaintiff and all members of the class all
13 "State B and O Surcharges" unjustly collected.

14 6.3 Defendant should be permanently enjoined from further billing
15 and collecting of a "State B and O Surcharge."

16 **VII. DAMAGES**

17 The wrongful conduct of Defendant described above has caused
18 Plaintiffs and the class of similarly situated customers the following damages:

19 7.1 Loss of money paid to Defendant that was not owed.

20 7.2 Incidental expenses including prejudgment interest.

21 7.3 Reasonable attorneys' fees and litigation expenses.

22 7.4 Treble and/or exemplary damages permitted by RCW 19.86.030,
23 et seq, along with prejudgment interest as authorized by law.
24

1 7.5 The total amount of damages set forth above is believed to be
2 less than \$5,000,000.

3 **VIII. REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiff, on his behalf, and on behalf of all other
5 members of the class, respectfully requests the following relief from this
6 honorable court:

7 8.1 A judgment against Defendant enjoining it from continuing to
8 charge customers a "State B and O Surcharge;"

9 8.2 A judgment in favor of Plaintiff and the putative class against
10 Defendant for restitution and reimbursement of all improperly paid amounts;

11 8.3 A judgment in favor of Plaintiff and the putative class and against
12 Defendant awarding Plaintiffs and the Plaintiff class treble, exemplary and/or
13 punitive damages up to the maximum amount permitted by law;

14 8.4 A judgment in favor of Plaintiff and the putative class and against
15 Defendant awarding Plaintiffs and the putative class prejudgment interest on
16 wrongfully paid amounts;


17 8.5 A judgment in favor of Plaintiff and the putative class and against
18 Defendant awarding Plaintiffs and the putative class their reasonable attorneys'
19 fees, expert fees, disbursements and costs of suit;

20 8.6 A judgment in favor of Plaintiff and the putative class for any
21 additional, further equitable or legal relief, which the Court deems appropriate
22 or just.
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DATED this 19 day of December, 2006.

SHORT CRESSMAN & BURGESS PLLC

By 
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COMPLAINT - 14

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