

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

DEAN SHORT, a Washington resident,  
individually and on behalf of all the members  
of the class of persons similarly situated,

Plaintiffs,

v.

SPRINT SPECTRUM L.P., a foreign  
corporation,

Defendant.

CLASS ACTION

NO. 09-2-04745-9SEA

COMPLAINT

COME NOW Plaintiff, Dean Short, individually and on behalf of all members of  
the class of persons similarly situated and for cause of action against Defendant,  
Sprint Spectrum L.P., and alleges as follows:

**I. PARTIES**

1.1 Plaintiff Dean Short is a resident of Clallam County, Washington. He is a  
former customer of defendant Sprint. After he terminated service, he was billed by  
Sprint and paid to Sprint an "Early Termination Fee" of \$200 per line, plus fees and  
taxes, despite having fulfilled his two-year service agreement. He seeks to represent  
a class of all current or past Washington state cellular phone customers of Sprint who  
were charged and paid an Early Termination Fee after their service agreements had  
been fulfilled. A large portion of the putative class is believed to reside in King County.

1 1.2 Sprint provides cellular phone service in the State of Washington directly  
2 and/or through wholly owned subsidiary companies. Sprint does substantial business  
3 in and has a substantial subscriber base in King County.

## 4 II. PLAINTIFFS' ALLEGATIONS

5 2.1 Plaintiff Short became a Sprint customer in about January 2004. He  
6 purchased two lines, one for his wife and one for himself. In about March 2006, he  
7 agreed to a new service agreement which included a two-year term and expressly  
8 provided that, following that term, the agreement would continue on a month-to-month  
9 basis unless he agreed to extend the term.

10 2.2 Plaintiff fulfilled the two-year term of the agreement.

11 2.3 Beginning with his January 2008 bill, Sprint unilaterally applied a line  
12 item "10% Access Discount" to his \$69.99 monthly service charge.

13 2.4 Sprint did not provide Plaintiff with any notice or explanation of this  
14 discount.

15 2.5 Sprint continued to apply this discount to Plaintiff's invoices each month.

16 2.6 On Plaintiff's March 2008 invoice, Sprint changed the line item for this  
17 discount to "10% Access Disc-2yr Contract."

18 2.7 Sprint still did not provide Plaintiff with any notice or explanation of this  
19 discount.

20 2.8 Several months later, Plaintiff canceled his service with Sprint and  
21 switched to a competitor.

22 2.9 Sprint subsequently billed Plaintiff \$400 in "Early Termination Fees," plus  
23 taxes and surcharges, for a total of over \$445.

24 2.10 Plaintiff complained that his termination of service was not subject to an  
25 Early Termination Fee because he had fulfilled the two-year term of his agreement.  
26

1           2.11 Sprint claimed that his two-year term had been unilaterally "renewed" on  
2 January 8, 2008. Sprint claimed that the renewal occurred in exchange for the 10%  
3 discount it had applied, without explanation, to Plaintiff's bills beginning in January  
4 2008.

5           2.12 Plaintiff paid Sprint over \$445 for early termination fees, under protest.

6           2.13 Sprint never asked Plaintiff if he wanted to renew the term of the  
7 agreement he entered into in about March 2006.

8           2.14 Plaintiff never stated that he wanted to renew the term of that agreement.

9           2.15 Plaintiff claims that Sprint's attempt to unilaterally "renew" the term of the  
10 agreement and that of other Washington state customers by, for example, unilaterally  
11 applying promotional offers to their accounts, is ineffective, unfair, and deceptive, and  
12 violates the Washington Consumer Protection Act, RCW 19.86 et seq.

13          2.16 Plaintiff seeks a declaratory judgment that Sprint's policy and practice of  
14 unilaterally imposing a new term on him and other Washington state customers is  
15 ineffective, unfair, deceptive, and unlawful.

16          2.17 Plaintiff has been individually damaged by the above described wrongful  
17 conduct of Defendant in the amount of approximately \$445.

18          2.18 Plaintiffs bring this action as a class action on behalf of all Washington  
19 customers of Sprint who have been improperly billed or threatened with early  
20 termination fees as a result of Sprint's policy and practice of unilateral term renewal.

### 21                           **III. PLAINTIFFS' CLASS ACTION ALLEGATIONS**

22          3.1 Plaintiffs bring this action pursuant to Superior Court Civil Rules 23(b)(2)  
23 and (b)(3) on behalf of the following class:

24           All current and former Washington state wireless service customers of  
25 Sprint, whose terms of service were "renewed" by Sprint's unilateral  
26 action, and who have either been charged and paid Early Termination  
Fees or have remained customers of Sprint as a result of the threat of  
Early Termination Fees.

1 Excluded from the class are Defendant, its officers and directors, and the  
2 assigned judge and his or her immediate family members. Plaintiff is a member  
3 of the above described class.

4 **A. Numerosity**

5 3.2 The class of Plaintiffs similarly situated is so numerous that joinder of all  
6 members is impractical because there are believed to be at least 5,000 members of  
7 the class located in all major cities and communities across the state of Washington.  
8 The exact number of members of the class is presently unknown to Plaintiffs but may  
9 be determined from records maintained by Defendant.

10 3.3 Defendant maintains records of its contact with customers. Those  
11 records are organized in categories corresponding to the type of call or query the  
12 customer makes. Accordingly, there is a small number of discreet and segregable  
13 subsets of records that concern customer calls or queries in which the customer  
14 attempted to cancel service during the term of his or her contract or called or queried  
15 to question Early Termination Fees.

16 3.4 The class of Plaintiffs similarly situated is unable to sue for judicial relief  
17 because their individual claims are so small it would be economically unfeasible to  
18 pursue litigation on an individual basis.

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

20 3.5 Plaintiff's claims are identical to and typical of the claims of members of  
21 the proposed class. All class members assert that the billing or threatening to bill  
22 Early Termination Fees constitutes an unfair practice under the Washington CPA.

23 3.6 The following facts are common to the class of Plaintiffs and  
24 predominate over any individual issues:

25 a. All class members have had service with Defendant through a  
26 wireless service plan for a set term;

1           b.     All class members fulfilled their original term.

2           c.     All class members were subjected to Sprint's policy and practice  
3 of unilateral term renewal.

4           d.     All members of the class were injured by Sprint's automatic  
5 renewal policy and practice, either by paying an Early Termination Fee or by foregoing  
6 a desired change in carriers.

7           3.7    The following issues of law are common to all class members and  
8 predominate over any individual issues:

9           a.     Is defendant's unilateral term renewal policy/practice a deceptive  
10 or unfair act or practice, and/or does it have the capacity to deceive a substantial  
11 portion of the public?

12          b.     Does defendant's unilateral term renewal policy/practice affect the  
13 public interest?

14          c.     Should the court enjoin defendant from further exercise of its  
15 unilateral renewal policy/practice?

16          d.     Should the court order a repayment of all damages to customers?

17          e.     Is an award of exemplary damages under the Consumer  
18 Protection Act of three times the amount of the customer's improperly paid charges an  
19 appropriate remedy?

20           **C.    Injunctive/Declaratory Relief**

21           3.8    Sprint has imposed its unilateral renewal policy/practice on grounds  
22 generally applicable to the entire class, making final injunctive or corresponding  
23 declaratory relief with respect to the class as a whole appropriate. The monetary relief  
24 that would be due to the class is incidental to the injunctive and declaratory relief  
25 Plaintiffs seek.  
26

1           **D.     Superiority**

2           3.9     The issues of law and fact as stated above are identical and adjudication  
3 or resolution of the above stated questions of law or fact could lead to possible  
4 inconsistent adjudications if not adjudicated as a class action. The issue of whether  
5 the Defendant's unilateral renewal policy/practice is an unfair or deceptive trade  
6 practice is subject to a single adjudication by Washington courts.

7                 a.     This action will achieve economies of time, effort, and expense,  
8 and promote uniformity of decision as to persons similarly situated.

9                 b.     A class action is superior to other available methods for the fair  
10 and efficient adjudication of this controversy. The size of the individual damages  
11 sustained by class members—approximately \$200 each—makes it cost prohibitive to  
12 pursue the claims on an individual basis.

13                c.     There are no unusual difficulties likely to be encountered in the  
14 management of this litigation as a class action. The members of the class can be  
15 determined from Defendant's records. Given the size of the individual damages claim,  
16 a class action is the only feasible method by which this controversy may be resolved.

17           **E.     Adequacy of Representation**

18           3.10    Plaintiff can and will fairly and adequately represent and protect the  
19 interests of the class and have no interests that conflict with or are antagonistic to the  
20 interest of the class.

21           3.11    Plaintiff have retained competent and experienced legal counsel to  
22 prosecute his individual claims and those of the class.

23           **IV. COUNT 1: VIOLATION OF CONSUMER PROTECTION ACT**

24           4.1     Defendant violated the Washington Consumer Protection Act, RCW  
25 19.86.010 et seq. by unilaterally "renewing" the original term of the service agreement  
26

1 with Plaintiff and the class and billing or threatening to bill Plaintiffs and the class Early  
2 Termination Fees if they canceled service.

3 4.2 As a direct and proximate result of Defendant's violation of the CPA,  
4 Plaintiff and the members of the class have suffered injury to business or property.

## 5 **V. COUNT 2. UNIFORM DECLARATORY JUDGMENT ACT**

6 5.1 Pursuant to the Washington Uniform Declaratory Judgment Act, Plaintiffs  
7 seek a declaration that Defendant's unilateral renewal policy/practice is an unfair or  
8 deceptive trade practice in violation of the CPA.

9 5.2 As a result of this violation, Defendant should repay Plaintiff and all  
10 members of the class all damages, including all Early Termination Fees collected from  
11 them.

12 5.3 As a result of this violation, Defendant should be enjoined from further  
13 exercise of its unilateral renewal policy/practice.

## 14 **VI. COUNT 3. UNJUST ENRICHMENT**

15 6.1 As a result of Defendant's unilateral renewal policy/practice, Defendant  
16 has been unjustly enriched.

17 6.2 Defendant should repay Plaintiff and all members of the class all  
18 amounts it unjustly collected by enforcing its unilateral renewal policy/practice.

19 6.3 Defendant should be enjoined from further exercise of its unilateral  
20 renewal policy/practice.

## 21 **VII. DAMAGES**

22 The wrongful conduct of Defendant described above has caused Plaintiffs and  
23 the class of similarly situated customers or subscribers damages, for which they seek  
24 the following:

25 7.1 Loss of money paid to Defendant.

26 7.2 Incidental expenses including prejudgment interest.

1 7.3 Reasonable attorneys' fees and litigation expenses.

2 7.4 Treble, exemplary or punitive damages, by law, and prejudgment interest  
3 as authorized by law.

4 7.5 The total amount of relief sought by the class is less than \$5,000,000.

5 **VIII. REQUEST FOR RELIEF**

6 WHEREFORE, Plaintiffs, on their behalves, and on behalf of all other members  
7 of the class, respectfully request the following relief from this honorable court:

8 8.1 A judgment against Defendant declaring its practice of unilaterally  
9 renewing customers' contractual term of service violates the Washington Consumer  
10 Protection Act, and enjoining that practice in the future.

11 8.2 A judgment in favor of Plaintiffs and the class against Defendant for  
12 restitution and reimbursement of all improperly collected moneys;

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

16 8.4 A judgment in favor of Plaintiffs and against Defendant awarding  
17 Plaintiffs prejudgment interest on wrongfully paid fees;

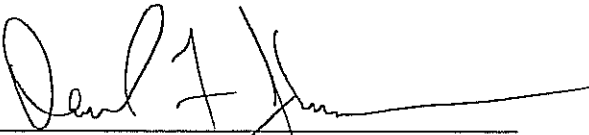
18 8.5 A judgment in favor of Plaintiffs and against Defendant awarding  
19 Plaintiffs their reasonable attorneys' fees, expert fees, disbursements and costs of suit;

20 8.6 A judgment in favor of Plaintiffs for any additional, further equitable or  
21 legal relief, which the Court deems appropriate or just.

22 DATED this 23 day of January, 2009.

23 BRESKIN JOHNSON & TOWNSEND PLLC

24  
25 By

  
26 Daniel F. Johnson, WSBA No. 27848  
Attorneys for Plaintiff