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

KENNETH UDLINEK and JOSEPH  
LaBARGE, individually and on behalf of  
all the members of the class of persons  
similarly situated,

Plaintiff,

v.

AT&T WIRELESS SERVICES, INC., a  
domestic corporation,

Defendant.

NO.

CLASS ACTION COMPLAINT FOR  
BREACH OF CONTRACT AND  
VIOLATION OF CPA

COME NOW Plaintiffs, Kenneth Udlinek and Joseph LaBarge, individually  
and on behalf of all members of the class of persons similarly situated and complains of  
the Defendant, AT&T Wireless Services, Inc., and allege as follows:

**I. INTRODUCTION**

1.1 Plaintiffs are cellular phone customer of Defendant, AT&T Wireless  
Services, Inc. (hereafter "AWS"). Plaintiffs bring this action as a class action on behalf  
of all AWS customers similarly situated. Plaintiffs and the class complain of various  
violations by AWS; namely, that AWS collects municipal taxes even though plaintiffs

1 and the class do not live in a municipality, AWS has crammed wireless phone features  
2 (charging for features that the plaintiffs and the class did not order) and AWS charged  
3 for long distance, roaming and family calling plan charges that were supposed to be  
4 free under their billing plan. Plaintiffs and the class allege that AWS actions violated  
5 the Consumer Protection Act and breached their contract. AWS previously entered into  
6 binding settlement agreements regarding improperly collecting municipal taxes.  
7 However, AWS has breached this contract and continues to collect improperly collect  
8 municipal taxes from class members who live outside city limits.

## 9 II. JURISDICTION AND VENUE

10 2.1 Plaintiff Kenneth Udlinek is a resident of Grant County, in the state of  
11 Washington.

12 2.2 Plaintiff Joseph LaBarge is a resident of Will County, in the state of  
13 Illinois.

14 2.3 Defendant AT&T Wireless Services, Inc. ("AWS") is a Delaware  
15 corporation with its principle place of business in King County, in the state of  
16 Washington. AWS provides wireless phone service throughout the United States.

17 2.4 This court has jurisdiction and venue over this matter.

## 18 III. PLAINTIFF'S ALLEGATIONS

19 3.1 AWS has collected fees from thousands of people like the Plaintiffs that  
20 were not owed, in violation of the CPA and their contract.

21 3.2 AWS has failed to refund money improperly collected from Plaintiffs  
22 and other similarly situated.

23 3.3 Plaintiffs and the putative class seek monetary and injunctive relief  
24 against AWS, including (a) an order enjoining AWS from collecting city taxes from

1 class members that live outside city limits, enjoining AWS from cramming fees enjoin  
2 AWS from charging for long distance, roaming and family calling plan charges that are  
3 contractual free of charge and enjoining AWS from engaging in the deceptive practices  
4 claimed herein; (b) compensatory damages; and (c) punitive damages.

#### 5 IV. PLAINTIFFS CLASS ACTION ALLEGATIONS

6 4.1 Plaintiffs bring this action pursuant to Rules of Procedure 23(b)(1), (2)  
7 and 23(b)(3) on behalf of the following four classes:

8 A. All current and former wireless service subscribers of  
9 AWS within the United States, whose residence or business  
10 address is or was in an unincorporated area, from whom  
11 AWS collected a "Municipal Tax". Municipal Tax is defined  
12 as a municipal excise tax, utility tax, sales tax, infrastructure  
maintenance fee or other local tax. The time period for the  
class is from the effective dates of the settlements in the  
Aguirre v. AWS and Hoffman v. AWS to the present.

13 B. Within the past 6 years, all current and former wireless  
14 service subscribers of AWS within the United States, from  
15 whom AWS collected fees for features not ordered by the  
customer.

16 C. Within the past 6 years, all current and former wireless  
17 service subscribers of AWS within the United States, from  
18 whom AWS collected long distance, roaming and family  
calling plan charges and in violation of their service plan.

19 Excluded from these classes are all agents or employees of  
AWS.

20 4.2 Class certification under CR 23(b)(2) requires one finding: that the party  
21 opposing the class has acted or refused to act on grounds generally applicable to the  
22 class, thereby making appropriate final injunctive relief or corresponding declaratory  
23 relief with respect to the class as a whole.  
24

1 4.3 CR 23(a) establishes four threshold requirements for class certification:

- 2 a. The class is so numerous that joinder of all members is  
3 impracticable;
- 4 b. There are questions of law or fact common to the class;
- 5 c. The claims or defenses of the representative parties are typical of  
6 the claims or defenses of the class; and
- 7 d. The representative parties will fairly and adequately protect the  
8 interest of the class.

9

10 4.4 Class certification under CR 23(b)(3) requires two findings: that  
11 common questions of law and fact predominate and that a class action is superior to  
12 other forms available for fair and efficient adjudication.

13 **Numerosity**

14 4.5 The putative class of consumers similarly situated is so numerous that  
15 joinder of all members is impractical because there are thousands of members of the  
16 class. Members of the class are geographically dispersed throughout the United States.  
17 The exact number of members of the class is presently unknown to plaintiffs but may  
18 be determined from records maintained by AWS.

19

20 4.6 The putative class of consumers similarly situated is unable to sue for  
21 judicial relief because their individual claims are so small it would be economically  
22 unfeasible to pursue litigation on an individual by individual basis.

1 **Common Questions of Fact**

2 **Class A – Municipal Taxes**

3 a. All members of the class reside outside of the geographic boundaries of  
4 the municipality that charge a Municipal Tax.

5 b. All members of the class have been improperly charged and paid a  
6 Municipal Tax.

7 c. All members of the class have not been fully reimbursed for the  
8 improperly charged Municipal Taxes and the artificially increased state and federal  
9 taxes collected by defendant.

10 d. All members of the class should not have been charged a Municipal Tax  
11 because the class member did not reside within city geographic boundaries.

12 e. All members of the class are entitled to a refund of the municipal taxes,  
13 state and federal taxes and such other relief as the court deems just including  
14 prejudgment interest.

15 f. All members of the class were determined by defendant to be subject to  
16 a “Municipal Tax” charge based upon the defendant’ improper corporate policies,  
17 practices and procedures, irrespective of any differences in the wording of the  
18 applicable municipal ordinance or state law.

19 g. All members of the class were subjected to the same corporate policies,  
20 practices and procedures used by the defendant for determining when and how a class  
21 member would receive a refund of improperly charged municipal taxes, irrespective of  
22 the wording of the applicable municipal ordinance or state law.  
23  
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1 h. All members of the class were the intended beneficiaries of prior  
2 settlement agreements and have breach of contract claims against AWS.

3 i. All members of the class have been harmed by the unjust enrichment of  
4 the defendant.

5 **Class B – Feature Cramming**

6 a. All members of the class were charged and paid for wireless phone  
7 features that they did not order.

8 b. All members of the class were not fully reimbursed for the fees paid to  
9 defendant for features that they did not order.

10 c. All members of the class should not have been charged for the features  
11 added to their wireless phone service by defendant because they did not request the  
12 added features.

13 d. All members of the class paid for features that they did not order.

14 e. All members of the class have sustained damages due to the unjust  
15 conduct of the defendant.

16  
17 **Class C – Improper Long Distances, Roaming and Family Calling Plan Charges**

18 a. All members of the class were charged and paid for long distance  
19 roaming and family calling plan charges that they should not have been charged for  
20 since their contract of service included the long distance, roaming or family member to  
21 family member service at no addition charge.

22 b. All members of the class were not fully reimbursed for the improperly  
23 charged long distance, roaming or family member fees paid to defendant.  
24

1 c. All members of the class have sustained damages due to the unjust  
2 conduct of the defendant.

3 **Common Questions of Law**

4 4.7 The following issues of law are common to all class members:

- 5 a. Did AWS breach its contract with the class?  
6 b. Did AWS breach its prior settlement agreement with the class?

7 c. Did AWS's actions cause other monetary damage to class  
8 members?

9 d. Are the members of the class entitled to reimbursement and  
10 prejudgment interest for the improper charges paid to AWS?

11 e. Did AWS engage in false and deceptive acts in violation of the  
12 Washington Consumer Protection Act?

13 f. Are the members of the class entitled to injunctive relief  
14 enjoining AWS from continuing to charge the class a fee for services that AWS  
15 did not provide?

16 g. Do AWS's actions require the imposition of treble and/or  
17 exemplary damages?

18 **Superiority**

19 4.8 The issues of law and facts as stated above are identical and adjudication  
20 or resolution of the above stated questions of law or fact could lead to possible  
21 inconsistent adjudications.

22 4.9 This action brought by the putative class will eliminate repetition in  
23 adjudicating the same issues and thus will prevent court congestion.  
24





1 | charges submitted to them on their bills. Failure to pay in full would result in a breach  
2 | of contract and discontinuance of wireless phone service, accrued interest and a  
3 | cancellation fee.

4 |         5.4     Plaintiffs and the members of the class accepted the offer of services  
5 | from AWS and performed their portion of the contract by paying their bills.

6 |         5.5     The express and implied terms of the contract were that AWS would  
7 | only charge the contractually agreed upon monthly charges.

8 |         5.6     Each class was charged and paid an additional monthly fee, in the form  
9 | of Municipal Taxes, cramming charges or contractually unjustified long distance,  
10 | roaming and family plan charges.

11 |         5.7     AWS breached its contract with Plaintiffs and the class by collecting  
12 | fees for municipal taxes that were not owed, fees for services that were not ordered and  
13 | fees for long distance, roaming and family plan charges that were not owed, in direct  
14 | violation of the express and implied terms of the contract.

15 |         5.8     AWS entered into a settlement agreement in the cases of Aguirre v.  
16 | AT&T Wireless Services, Inc. and Hoffman v. AT&T Wireless Services, Inc. in which  
17 | AWS agreed, on a nationwide basis, to various terms including that it would stop  
18 | charging for municipal taxes to class members who reside outside city limits. AWS has  
19 | breached the settlement agreement by continuing to charge class members for  
20 | municipal taxes and failing to implement all of the terms of the agreement.

21 |         5.9     As a direct and proximate result of AWS's breach of contract Plaintiffs  
22 | and the class have sustained damages in an amount to be proven at the time of trial.

1           **VI. COUNT II: VIOLATION OF CONSUMER PROTECTION ACT**

2           6.1     Plaintiffs and the members of the class reallege each and every  
3 allegation contained in Sections I through V above, and incorporate them herein by  
4 reference.

5           6.2     The Washington Consumer Protection Act, RCW 19.86.010 *et seq.*  
6 applies to protect all consumers in other states because the false and/or deceptive acts  
7 or practices at issue in this case originated and were carried out in AWS's Washington  
8 offices.

9           6.3     AWS violated the Washington Consumer Protection Act, RCW  
10 19.86.010 *et seq.* by engaging in the following unfair and deceptive trade practices:

11                 a.   Unfairly and deceptively billing and collecting fees for municipal taxes  
12 that were not owed;

13                 b.   Unfairly and deceptively billing and collecting fees for services not  
14 ordered;

15                 c.   Unfairly and deceptively billing and collecting fees for long distance,  
16 roaming and family plan minutes that were free of charge under the rate plan of the  
17 plaintiffs and class;

18                 d.   Unfairly and deceptively failing to notify Plaintiffs and the class that  
19 they did not owe the municipal taxes, service fees or long distance, roaming or family  
20 plan charges;

21                 e.   Unfairly and deceptively failing to allow Plaintiffs and the class the  
22 right to terminate the contract without penalty due to AWS's breach;  
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1 f. Unfairly and deceptively failing to provide meaningful compensation to  
2 Plaintiffs and the class for their investments in hardware (such as the cost of the  
3 wireless phone, accessories and supplies), if Plaintiffs and the class chose to terminate  
4 the contract because of AWS's breach of contract;

5 g. Unfairly and deceptively entering into settlement agreements regarding  
6 improperly charging municipal taxes and not honoring the agreements;

7 h. In order to effectuate a settlement in prior lawsuits, unfairly and  
8 deceptively making promises to implement new billing procedures to prevent the  
9 improper charging of municipal taxes and failing to implement those changes.  
10

11 i. Failing to properly notify and advise Plaintiffs and the class of their  
12 right to reimbursement for improper charges;

13 j. Failing to reimburse Plaintiffs and class members promptly for improper  
14 charges collected;

15 k. Retaining money unlawfully collected from Plaintiffs and the class and  
16 thereby defrauding Plaintiffs and the class.  
17

18 6.4 It was AWS's intent that the Plaintiffs and the class rely on its prior  
19 unfair and deceptive promises to implement new billing procedures to prevent the  
20 improper charging of municipal taxes.

21 6.5 It was AWS's intent that Plaintiffs and the class would rely on  
22 AWS's billing statement and pay the municipal taxes, unauthorized service fees, long  
23 distance roaming and family plan charges.  
24



- 1           7.2    Incidental expenses including prejudgment interest.
- 2           7.3    Reasonable attorneys' fees and litigation expenses.
- 3           7.4    Treble, exemplary or punitive damages, by law, and prejudgment
- 4 interest as authorized by law.

**VIII. REQUEST FOR RELIEF**

6           **WHEREFORE**, Plaintiffs, on their behalf, 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 AWS enjoining it from continuing to charge  
9 plaintiffs and the class for municipal taxes not owed, services not ordered and/or long  
10 distance charges not owed;

11          8.2    A judgment in favor of plaintiffs and the putative class against AWS for  
12 restitution and reimbursement of all improperly collected fees;

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

16          8.4    A judgment in favor of Plaintiffs and the putative class and against  
17 AWS awarding Plaintiffs and the class prejudgment interest on wrongfully collected  
18 fees and charges;

19          8.5    A judgment in favor of Plaintiffs and the putative class and against  
20 AWS awarding Plaintiffs and the putative class their reasonable attorneys' fees, expert  
21 fees, disbursements and costs of suit;

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