JAMS

VINCENT EMILIO, individually and on behalf of all others similarly situated,	:	
Claimant,	:	**SECOND AMENDED DEMAND FOR CLASS**
-vs.-	:	**ACTION ARBITRATION**
SPRINT SPECTRUM L.P. d/b/a/ SPRINT PCS,	:	
Respondent.	:	

Pursuant to the applicable JAMS rules, and in accordance with the October 25, 2006 Decision on Enforceability of Class Action Preclusion Clause rendered by the Honorable Kathleen A. Roberts in this arbitration proceeding (the "October 25, 2006 Decision"), Claimant Vincent Emilio ("Claimant"), individually and on behalf of all others similarly situated, by his undersigned attorneys, alleges upon personal information as to himself and upon information and belief as to all other allegations, for his Second Amended Demand for Class Action Arbitration against respondent Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint" or "Respondent"), as follows:

NATURE OF THE ARBITRATION

1. Claimant brings this class action arbitration individually and on behalf of a class comprised of all persons who, during the period commencing no less than three years or more than six years prior to the filing of Claimant's original arbitration demand on or about January 4, 2005 and continuing to the present (the "Class Period"), were Sprint wireless telephone service customers who paid "New York State Excise Tax" ("Excise Tax(es)") as part of their monthly charges (the "Class").

2. As further alleged herein, the Excise Tax that Respondent has collected from Claimant and the other members of the Class is an unlawful, deceptive and inequitable attempt by

Sprint to obtain reimbursement for amounts that Respondent was and is not authorized to pass directly on to its customers under New York Tax Law ("Tax Law") § 186-e. In fact, the Excise Tax collected by Respondent is nothing more than an operating cost that reduces Respondent's operating profit like any other operating cost Respondent must pay as a cost of doing business with Claimant and the Class. Claimant and the Class, however, are led to believe that these Excise Taxes are amounts imposed directly on customers and collected and remitted by Sprint to the New York taxing authorities on the customers' behalf, when in reality the Excise Taxes are imposed only on Sprint. By failing to clearly and non-misleadingly disclose the true nature of the Excise Taxes billed and collected, Sprint is able to artificially and deceptively advertise its rates, and to contract for its wireless services with Claimant and the Class, at a materially lower amount than the customers actually will have to pay each month. As a result of Respondent's unlawful, deceptive and inequitable conduct, Claimant and the Class have been and are wrongfully subjected to the Excise Tax.

3. By this class action arbitration, Claimant seeks to remedy the harm caused by Respondent's unlawful, deceptive and inequitable conduct. As set forth below, Claimant and all those similarly situated should be awarded compensatory damages, restitution and/or other relief to redress Respondent's unlawful, deceptive and inequitable conduct (i) violating the Kansas Consumer Protection Act ("KCPA"), Kansas Statutes Annotated ("KSA") 50-623, *et seq.* (or alternatively, the comparable New York consumer protection statute, New York General Business Law ("GBL") § 349), (ii) breaching the contract between Sprint and Claimant and the Class, and (iii) constituting unjust enrichment. Additionally, Respondent should be enjoined from collecting Excise Tax from all of its customers under its current practices, and should be required

to clearly disclose the true nature of the Excise Taxes and the real price of its services at the beginning of and throughout its relationship with each New York customer.

JURISDICTION

4. JAMS has jurisdiction over this dispute pursuant to the section entitled "Mandatory Arbitration of Disputes" of the "Terms and Conditions of Services" of the Agreement between Sprint and its wireless customers (the "Agreement"), a copy of which was annexed as Exhibit A to Claimant's original Demand for Class Action Arbitration filed with JAMS on or about January 4, 2005.

THE PARTIES

5. Claimant Emilio is a resident of the City of Mount Vernon, County of Westchester, New York. At all times relevant hereto, Claimant has been a Sprint wireless telephone service customer who has been charged by and paid to Respondent the Excise Tax unlawfully, deceptively and inequitably collected by Respondent, and has been injured thereby.

6. Respondent Sprint is a Delaware limited partnership with its principal offices located in Kansas. Sprint is wholly owned by Sprint Corporation, a Kansas corporation with its principal executive offices located in Shawnee Mission, Kansas. Sprint is a global telecommunications company offering, among other services, wireless telephone services. Upon information and belief, the actions complained of herein were conceived, directed and controlled by Sprint from its principal executive offices in Kansas, and the Excise Taxes wrongfully and deceptively collected by Sprint redounded to its benefit and were controlled by Sprint from its principal executive offices in Kansas.

CLASS ACTION ARBITRATION ALLEGATIONS

7. Claimant brings this arbitration as a class action arbitration, pursuant to the JAMS rules and policies referred to herein, as supplemented by KSA 60-223 and/or Article 9 of the New York Civil Practice Law and Rules ("CPLR") and/or the JAMS Class Action Procedures adopted in February, 2005, on behalf of the Class consisting of all persons who, during the Class Period, were Sprint wireless telephone service customers and paid the Excise Tax as part of their monthly charges. Excluded from the Class are Respondent, and Respondent's directors, officers, parents, affiliates, subsidiaries and successors.

8. (a) The JAMS rules promulgated under the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses, Minimum Standards of Procedural Fairness (rev. April, 2003), require as follows, at Paragraph 3:

> Remedies that would otherwise be available to the consumer under applicable federal, state or local laws must remain available under the arbitration clause, unless the consumer retains the right to pursue the unavailable remedies in court.

Because the remedy of a class action would be available in this matter were it to be brought by Claimant in state court in absence of the arbitration provision of the uniform Agreement between Claimant and the Class and Respondent, such class action remedy is available in this arbitration pursuant to the above-quoted JAMS rule.

(b) Furthermore, the remedy of a class action is one of the remedies specifically made non-waivable under the KCPA, as Judge Roberts squarely held in the October 25, 2006 Decision.

9. The Class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of the relevant supplemental class action procedural rules.

10. The members of the Class are so numerous that joinder of all members is impracticable. Although the precise number of Class members is unknown to Claimant at this time and can be determined only by appropriate discovery, it is reasonably estimated that the Class consists, at a minimum, of hundreds of thousands of members who are geographically dispersed throughout New York State.

11. Because Claimant is a customer of Respondent's wireless telephone services who has paid for and been subjected to the unlawful, deceptive and inequitable collection of Excise Tax, Claimant is a member of the Class whose claims are typical of the claims of the members of the Class. The harm suffered by Claimant and all other Class members was and is caused by the same conduct by Respondent, *viz.*, Respondent's unlawful, deceptive and inequitable collection of the Excise Tax under its practices alleged herein.

12. Claimant will fairly and adequately represent and protect the interests of the Class, in that Claimant has no interests antagonistic to, nor in conflict with, the Class. Claimant has retained competent counsel, experienced in consumer and commercial class actions and in arbitration, to further ensure such protection and who intend to prosecute this class action arbitration vigorously.

13. A class action arbitration is superior to other available methods for the fair and efficient adjudication of this controversy. Because the monetary damages suffered by individual Class members are relatively small, the expense and burden of individual arbitration make it

virtually impossible for individual Class members to seek redress for the wrongful conduct alleged herein. If Class treatment of these claims were not available, Respondent would likely continue its wrongful conduct, and also would unfairly receive many hundreds of thousands or millions of dollars in unlawfully collected and retained Excise Taxes, or would otherwise escape liability for its wrongdoing as alleged in this Demand.

14. Common questions of law and fact exist as to all members of the Class which predominate over any questions that may affect individual Class members. Among the questions of law and fact common to the Class are the following:

(a) whether the Excise Tax was/is unlawfully, deceptively and/or inequitably charged to and collected from Respondent's wireless telephone service customers;

(b) whether Respondent has breached its contracts with Claimant and the Class by its imposition and collection of the Excise Tax;

(c) whether Respondent has violated the KCPA (or alternatively, GBL § 349) by its imposition and collection of the Excise Tax;

(d) whether Respondent has been unjustly enriched by its collection of the Excise Tax;

(e) whether Respondent should be enjoined from seeking to collect the Excise Tax under its current practices from all of its New York customers, and should be required to clearly disclose the true nature of the Excise Taxes and the real price of its services at the beginning of and throughout its relationship with each New York customer; and

(f) the appropriate measure of damages, restitution and/or other relief.

15. The Class is readily definable, and prosecution of this action as a class action arbitration will reduce the possibility of repetitious arbitration. Information concerning the Excise Taxes collected by Respondent from Claimant and the Class is readily available from Respondent's books and records. Claimant knows of no difficulty which will be encountered in the management of this arbitration which would preclude its maintenance as a class action arbitration.

FACTUAL ALLEGATIONS

16. Sprint provides wireless telephone service to Claimant and the Class at a specific monthly recurring price, depending, inter alia, on the number of minutes of wireless service a customer chooses to use during a one-month period.

17. Sprint's standard form Agreement with its customers, which is not negotiable and is imposed on a take-it-or-or-leave-it basis, and which can be changed or amended by Sprint at any time with such changes or amendments deemed accepted by any use of Sprint services at anytime thereafter, expressly provides that the Agreement and Sprint's relationship with its customers is to be "governed by and must be construed under . . . the laws of the State of Kansas without regard to choice of law principles."

18. New York Tax Law, in the first instance, governs Sprint's rights and obligations to assess and collect the New York State Excise Taxes. Under Tax Law § 186-e, Sprint, as a "provider of telecommunications services," has the sole obligation to pay the Excise Tax, in an amount since 2000 equal to 2.5% of all receipts for wireless telecommunications services it provides to its customers, and in amounts as much as 3.5% during the Class Period prior to 2000.

Under Tax Law § 186-e(2)(a), the obligation to pay the Excise Tax is imposed only on Sprint, and specifically is required "to be paid by [Sprint]," not its customers.

19. (a) Under New York Tax Law at all times relevant hereto, Sprint was and is not authorized to pass on to customers its obligation to pay Excise Taxes. Specifically, Tax Law § 186-e does not provide such a right, and to the contrary, Tax Law § 186-e(2)(a) states that the Excise Tax is required "to be paid by [Sprint]." Furthermore, there is no existing State regulation that authorizes Sprint to pass on to its wireless customers its obligation to pay Excise Taxes.

(b) As compared to the Excise Tax under § Tax Law § 186-e(2)(a), the New York Legislature has specifically authorized certain other tax obligations to be passed on to consumers – as in Tax Law § 186-a(6), a provision of Article 9 of the Tax Law, the same Article in which Tax Law § 186-e is found.

(c) The construction of Tax Law § 186-e not authorizing Respondent to pass on the Excise Tax obligation to Claimant and the Class is further confirmed by New York Statutes § 74 (1 McKinney's 1971). New York Statutes § 74 is the New York Legislature's codification of the rule of construction "expressio unius est exclusio alterius," and states as follows:

> A court cannot by implication supply in a statute a provision it is reasonable to suppose the Legislature intended intentionally to omit; and the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended.

Under New York Statutes § 74, the Legislature is understood to have intended that the Excise Tax is the obligation of and is to be paid by Sprint – particularly in light of the difference between the Excise Tax statute, § 186-e(2)(a), and the other statute within the same Article 9, § 186-a(6),

which expressly allows the tax obligation imposed under § 186-a to be passed on to the customers of the corporate entities subject to that tax.

20. Despite the lack of specific authority to do so under New York Tax Law, Sprint has included a charge for the Excise Tax in its bills to its customers, and has collected the Excise Tax from its customers, including Claimant and the Class. It has accomplished this unlawful, deceptive and inequitable cost shifting through the artifice of vague and misleading language in its customer Agreement and its monthly billing disclosures that would lead any reasonable New York customer to believe that the New York Excise Taxes were a legitimate pass-through of taxes imposed on the customer, rather than a bald assessment by Sprint of certain operating costs that would otherwise diminish its already sizeable profit margin on the advertised and agreed-to monthly rates it promises Claimant and the Class.

21. (a) The "Terms and Conditions of Services" governing the relationship between Sprint and its customers as of May 1, 2000 and in effect at the time Claimant opened his wireless account provided as follows:

> **Taxes and Other Regulatory Related Charges.** We invoice you for taxes, regulatory related obligations and other charges levied by federal, state or local authorities, or foreign government on Services, or mandated to be paid in proportion to receipts from telecommunication services provided, or on sales of equipment (except for taxes based on our net income), if we pay these taxes or other regulatory related charges. Taxes, regulatory related charges and charges not directly paid by us are not invoiced to you, but payment to the taxing or levying of any applicable taxes, regulatory related charges and charges due from you are your responsibility.

(b) The standard Sprint billing statement provided to Claimant and the Class during the period governed by the May, 2000 Terms and Conditions included a heading for the subsection "**Additional Billing Information.** Detail of Taxes, Regulatory and Other Surcharges

and Fees" where the Excise Taxes were included, and also provided the following disclosure on the back of the first page of the bill:

> **Taxes, Surcharges, and Other Regulatory Related Charges** – these include applicable federal, state, city and county taxes. Other fees and charges are also invoiced here, including the Regulatory Obligations and Fees surcharge which funds expenses associated with the federal programs such as Federal USF and E911.

22. (a) The May 1, 2000 "Terms and Conditions of Services" governing the relationship between Sprint and its customers were amended effective June 1, 2003 to provide as follows:

> **Taxes and Surcharges.** We invoice you for taxes, fees and other charges levied by or remitted directly to federal, state or local authorities, or foreign government on Services including, without limitation, sales, gross receipts, use, and excise taxes. . . .
>
> We also invoice you for fees that we collect and remit to the government such as Universal Service, and for surcharges the we collect and keep to pay for the costs of complying with governmental mandates such as number pooling and portability, and Enhanced 911 services. These charges are neither taxes nor government imposed assessments.

(b) The June 1, 2003 Terms and Conditions of Services were modestly amended effective June 30, 2004, to provide as follows:

> **Taxes and Surcharges.** We invoice you for taxes, fees and other charges levied by or remitted directly to federal, state, local or foreign governments including, without limitation, sales gross receipts, Universal Service, use, and excise taxes. . . . We also invoice you for surcharges that we collect and keep to pay for the costs of complying with governmental programs such as number pooling and portability, and Enhanced 911 service; these charges are not the taxes nor government imposed assessments.

This June 30, 2004 version was the version in effect at the time this arbitration was originally commenced in January, 2005.

23. (a) Shortly before the June 1, 2003 amendment to the "Terms and Conditions of Services" quoted in Paragraph 22(a), supra, the standard Sprint billing statement provided to Claimant and the Class was revised in February 2003 to include an "Explanation of Terms on Your Invoice" which provided the following disclosure on the back of the first page of the bill:

> Taxes – These include applicable federal, state, city and county taxes.
>
> Surcharges and Fees – The surcharges in this section generally recover the costs incurred by Sprint in complying with various federal and state mandates. Charges that appear in this section of your invoice, including charges associated with Federal Telephone Number Pooling, Federal and State Universal Service Funds and Federal E911, are neither taxes nor government-imposed assessments. Neither federal nor state law requires carriers to impose these charges but carriers are permitted to recover their costs for complying with these federal and state mandates.

(b) The February 1, 2003 "Explanation of Terms on Your Invoice" disclosures were modestly revised in or around July, 2003 – shortly after the June 1, 2003 amendment to the "Terms and Conditions of Services" quoted in Paragraph 22(a), supra – to provide the following on the back of the first page of the bill:

> Taxes – These include applicable federal, state, city and county taxes.
>
> Surcharges and Fees – The surcharges in this section generally recover the costs incurred by Sprint in complying with various federal and state mandates. Charges that appear in this section of your invoice, including charges associated with Federal Telephone Number Pooling and Portability, Federal and State Universal Service Funds (USF) and Federal E911, are neither taxes nor government-imposed assessments. The Federal USF charge is calculated using the FCC-prescribed contribution factor, which may change on a quarterly basis. Neither federal nor state law requires carries to impose these charges but carriers are permitted to recover their costs for complying with these federal and state mandates.

24. How the Excise Taxes charged to and collected from Claimant and the Class were actually treated on Sprint's monthly bills was as varied and confusing as the ways they were alluded to in the above-quoted versions of the customer agreement and the purportedly "helpful

information" in the disclosures on the back of the first pages of the customer bills. In some months, the Excise Tax charge was included as "New York State Excise Tax" under the Taxes subsection of the "Detail of Taxes, and Surcharges & Fees" section of the bill. In other months, the Excise Tax charge was included as "New York State Excise Tax" under the "Surcharges & Fees" subsection of the "Detail of Taxes, and Surcharges & Fees" section of the bill. And beginning with the December 2004 bill (one month before this arbitration was commenced in January 2005) and continuing to the present, the Excise Tax has been included as a "New York State Excise Tax Surcharge" (emphasis added) under the "Surcharges & Fees" subsection of the "Detail of Taxes, and Surcharges & Fees" section of the bill.

25. Thus, it is clear that Sprint is simply making it up as it goes along as to what it considers the Excise Taxes to constitute under its Agreement – except that under all scenarios the Excise Tax charges are nothing more than an additional tack-on to unlawfully, deceptively and inequitably increase Sprint's bottom line . Even when the Agreement clearly specifies that the Excise Taxes are precisely that – "excise tax taxes" – the bills nevertheless include the Excise Taxes under the "Surcharges & Fees" subsection of the "Detail of Taxes, and Surcharges & Fees" section of the bill – sometimes with a "'Surcharge' surname" and sometimes without that surname. But if the Excise Tax is a "surcharge" as it is affirmatively described in at least some of the Sprint bills, then the Excise Tax is "not a tax" under its Agreement and its billing disclosures. Except for the fact that the Excise Tax is a tax – but not a tax imposed on or authorized under New York Tax Law to be passed on to Sprint's customers.

26. From the beginning of the Class Period to the present, Sprint has never clearly disclosed to Claimant and the Class the true nature of the Excise Taxes charged and collected.

Nothing provided to its new or existing customers advises them of the true nature of the Excise Taxes charged and collected. Nor could any reasonable customer unversed in the nuances of New York Tax Law and faced with the inconsistencies between the customer Agreement and the bill disclosures figure out what Sprint really is doing here with respect to the Excise Taxes – shifting an operating cost in the guise of a pass-through to collect more than its advertised and contractually promised monthly rate – all to unlawfully, deceptively and inequitably increase its bottom-line profits.

27. But several things are now clear – at least to Claimant's counsel. First, if Sprint were authorized by New York Tax Law to pass through the Excise Taxes to its customers like it is doing anyway, then the Excise Taxes would be included in the Taxes section of monthly statement – consistent with the terms of the customer Agreement, which specifically distinguishes between "taxes" and "surcharges," and definitionally excludes "surcharges" from being taxes. Second, because Sprint has included the Excise Taxes in the "Surcharges & Fees" subsection of its bill, and specifically has described the charge as a "New York State Excise Tax Surcharge" since December, 2004, Sprint knows that it is not authorized under New York Tax Law to pass the Excise Taxes through to it customers – unlike other taxes and fees that are specifically authorized to be imposed on the customer under the relevant federal, state or local law.

28. That the Excise Taxes are an inequitable and deceptive tack-on is confirmed by the practices of Sprint's largest wireless telephone competitor in New York, Verizon. As opposed to Sprint, Verizon does not include in its monthly bills or collect a "New York State Excise Tax" from its wireless telephone customers, further confirming the deceptiveness and inequity of Sprint's practices and conduct alleged herein. But there is no reason for Sprint's customers to

know of the difference in the treatment of the Excise Taxes by Verizon, or even the possibility of a difference of treatment – because Sprint's customers are being billed by Sprint, not Verizon, and Sprint has misleadingly hidden from its customers the questionable and confusing basis for how and why it treats the Excise Taxes differently.

29. Claimant and the Class have paid Sprint for the unlawful, deceptive and inequitable Excise Tax charges each month, unaware that Sprint is not authorized under the New York Tax Law to collect such Excise Tax, and deceptively misled and confused by Sprint's practice of including the charge for the Excise Tax in the portion of the bill suggesting to reasonable consumers that its collection from the customer is properly authorized by the relevant government body – rather than a bald-faced money grab.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

30. Claimant realleges and reincorporates herein each and every allegation set forth in the preceding paragraphs of this Second Amended Demand for Class Action Arbitration as if set forth verbatim.

31. Sprint's Agreement with Claimant and the Class is unclear and ambiguous as to whether Respondent is entitled to assess and collect Excise Tax from Claimant and the Class when New York Tax Law § 186-e does not affirmatively authorize its practices regarding those Excise Taxes. As such, the Agreement must be construed against Sprint, the drafter of the adhesion contract, and in favor of Claimant and the Class.

32. The passing through of the Excise Taxes under the facts alleged herein also violates the agreement between Sprint and its customers to provide wireless services at a prescribed monthly rate.

33. Respondent's collection of the Excise Taxes is a breach of Respondent's Agreements with Claimant and the Class, as well as the covenant of good faith and fair dealing implied under every contract under controlling law, and Claimant and the Class have been injured thereby.

34. Respondent is liable for the damages sustained by Claimant and the Class in an amount to be determined by the Arbitrator.

SECOND CLAIM FOR RELIEF

(Violations of KCPA)

35. Claimant realleges and reincorporates herein each and every allegation set forth in the preceding paragraphs of this Second Amended Demand for Class Action Arbitration as if set forth verbatim.

36. Respondent's conduct in imposing and collecting the Excise Tax as alleged herein, including, inter alia, its vague and inconsistent disclosures regarding the Excise Taxes that misleadingly and deceptively suggest that Sprint is authorized under New York Tax Law to pass through the Excise Taxes to its customers, as well as with respect to Sprint's advertising and promising of rates which are materially less than the rates actually charged, constitute materially deceptive acts or practices in connection with "consumer transactions" in violation of the KCPA. Among other things, Sprint's conduct wrongfully and deceptively leads consumers to believe that they are obligated to pay the Excise Tax under New York Tax Law when they are not, in

violation of KSA 50-626(a) & (b). Respondent's conduct alleged herein also is unconscionable and in violation of KSA 50-627.

37. Claimant and the Class have been injured by Respondent's deceptive acts and practices.

38. Under KSA 50-634 of the KCPA, Claimant is specifically entitled and authorized to seek "private remedies" including declaratory and injunctive relief against Respondent, and to pursue a class action for the damages caused by Respondent's conduct alleged herein. Under KSA 50-625 of the KCPA, Claimant's right to pursue these private remedies cannot be waived.

39. Respondent is liable for the damages sustained by Claimant and the Class as allowable under the KCPA, in an amount to be determined by the Arbitrator, as well as the attorneys' fees provided for under the KCPA.

40. Additionally, Respondent should be enjoined from continuing to engage in its wrongful violations of the KCPA for all of its customers with respect to the Excise Taxes, including Claimant and the Class, and should be required to clearly disclose the true nature of the Excise Taxes and the real price of its services at the beginning of and throughout its relationship with each New York customer.

THIRD CLAIM FOR RELIEF

(Alternatively, for Violations of GBL § 349)

41. Claimant realleges and reincorporates herein each and every allegation set forth in the preceding paragraphs of this Second Amended Demand for Class Action Arbitration as if set forth verbatim.

42. This claim for relief is asserted alternatively, in the event the Arbitrator determines that Respondent's conduct alleged herein either is not subject to or does not violate the KCPA.

43. Respondent's conduct in collecting the Excise Tax, and in including such charge in a section of the bill that a reasonable consumer would have no reason to question, constitutes materially deceptive acts or practices in the conduct of business, trade or commerce or in the furnishing of services in the State of New York which affects the public interest under GBL § 349.

44. Claimant and the Class have been injured by Respondent's deceptive acts and practices.

45. Respondent is liable for actual damages sustained by Claimant and the Class as allowable under GBL § 349, in an amount to be determined by the Arbitrator, as well the attorneys' fees provided for under GBL § 349.

46. Additionally, Respondent should be enjoined from continuing to engage in its wrongful violations of GBL § 349 for all of its customers with respect to the Excise Taxes, including Claimant and the Class, and should be required to clearly disclose the true nature of the Excise Taxes and the real price of its services at the beginning of and throughout its relationship with each New York customer.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

47. Claimant realleges and reincorporates herein each and every allegation set forth in the preceding paragraphs of this Second Amended Demand for Class Action Arbitration as if set forth verbatim.

48. Respondent has been unjustly enriched at the expense of and to the detriment of Claimant and the Class by Respondent's wrongful collection of the Excise Tax under the facts and circumstances alleged herein. Respondent's retention of the monies wrongfully collected from Claimant and the Class violates fundamental principles of justice, equity and good conscience.

49. Claimant and the Class are entitled to recover from Respondent all amounts as unjust enrichment that have been wrongfully and improperly collected by Respondent, and Respondent should be required to disgorge the monies which it has unjustly obtained.

PRAYER FOR RELIEF

WHEREFORE, Claimant, on behalf of himself and the Class, prays for relief, and an arbitration award in his favor, as follows:

A. Certifying this case as a class action arbitration pursuant to the JAMS rules and the relevant supplemental class action rules and procedures, with Claimant certified as representative of the Class;

B. Awarding compensatory and/or actual damages, and/or disgorgement and/or restitution in favor of Claimant and the Class, in an amount to be determined through arbitration;

C. Declaring that Sprint's collection of the Excise Tax is not authorized under Tax Law § 186-e, breaches Sprint's contract with Claimant and the Class, violates the KCPA (or alternatively, GBL § 349), and constitutes unjust enrichment;

D. Enjoining Respondent from imposing and collecting the Excise Tax under the facts and circumstances alleged herein, and requiring Sprint to clearly disclose the true nature of Excise Taxes and the real price of its services at the beginning of and throughout its relationship with each New York customer;

E. Awarding the costs and disbursements incurred in connection with this Class Action Arbitration, including reasonable attorneys' fees and expenses;

F. Awarding pre- and post-arbitration award interest; and

G. Granting such other and further relief as the Arbitrator deems just and proper.

Dated: New York, New York
February 20, 2007

SANFORD WITTELS & HEISLER, LLP

By: /s/ William R. Weinstein
950 Third Avenue, 10th Floor
New York, NY 10022
(646) 723-2947

ATTORNEYS FOR CLAIMANT
AND THE CLASS