UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VINCENT EMILIO, individually and on behalf of all others similarly situated,	:	No. 11-cv-3041 (JPO)(KNF)
Plaintiff,	:	**AMENDED CLASS ACTION COMPLAINT**
-vs.-	:	
SPRINT SPECTRUM L.P. d/b/a/ SPRINT PCS,	:	
Defendant.	:	

Plaintiff Vincent Emilio ("Plaintiff"), individually and on behalf of all others similarly situated, by his undersigned attorney, alleges upon personal information as to himself, and upon information and belief as to all other allegations, for his Amended Class Action Complaint ("Amended Complaint") against Defendant Sprint Spectrum L.P. d/b/a/ Sprint PCS ("Sprint"), as follows:

INTRODUCTION

1. Plaintiff brings this action, individually and as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3), asserting claims for declaratory and injunctive relief and damages under the Kansas Consumer Protection Act, Kan. Stat. 50-623, *et seq.* ("KCPA"), on behalf of the following class:

> All Sprint wireless telephone service customers included within the definition of "consumers" in KCPA 50-624 (*i.e.,* individuals, husbands and wives, sole proprietors and family partnerships) who, during the period commencing on January 4, 2002 and continuing to June 30, 2007 (the "Class Period"), paid "New York State Excise Tax" ("Excise Tax(es)") as part of their monthly charges. Excluded from the Class are Sprint, and Sprint's directors, officers, parents, affiliates, subsidiaries and successors.

2. Sprint's practices regarding the Excise Taxes that are the subject of Plaintiff's Amended Complaint were deceptive, misleading and unconscionable, *inter alia,* because they caused Sprint's customers to believe that the Excise Tax was a tax imposed on customers by New York and required to be collected and remitted to the government by Sprint, when in fact it was a tax imposed by New York solely on Sprint, and thus was nothing more than a discretionary recoupment of Sprint's overhead costs and a hidden price increase.

3. As further detailed, *infra,* the Federal Communications Commission ("FCC") has determined in a Declaratory Ruling issued in March, 2005, *inter alia,* "that it is misleading to represent discretionary line item charges in any manner that suggests such line items are taxes or charges required by the government," and that such practices are unjust, unreasonable and unlawful under both the Federal Communications Act, 47 U.S.C. §201(b), and the FCC's rules, including 47 C.F.R. §64.2401(b).

4. As additionally detailed, *infra,* as a result of the investigation of the Attorneys General of 32 states, including Kansas, as to whether Sprint's advertising, sales and billing practices violated those states' consumer protection and trade practice statutes and related regulations, Sprint entered into a binding July 2004 Assurance of Voluntary Compliance ("AVC") with the 32 Attorneys General which required Sprint, *inter alia*: (i) to "clearly and conspicuously" disclose, during all sales transactions with new customers and with existing customers who were renewing, extending or changing their plan terms, "the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of . . . additional monthly discretionary charges" assessed on the basis of locale, including the Excise Taxes, and to provide the customers with written materials regarding these charges; and (ii) on

customer bills, "not [to] represent, expressly or by implication, that discretionary cost recovery fees are taxes."

5. Before and throughout the Class Period—and notwithstanding the AVC and the FCC's March 2005 Declaratory Ruling and Sprint's public comments to the FCC in connection with the Declaratory Ruling, *inter alia*, that Sprint was obligated under the AVC to comply with the AVC's requirements and that doing so would "provide consumers with the information necessary to make informed decisions"—Sprint (i) never clearly and conspicuously disclosed or confirmed in writing to the Class the existence, amount and discretionary nature of the Excise Tax charges, either in its monthly bills or during its sales transactions with new customers and with existing customers who were renewing, extending or changing their plan terms, and (ii) continued to expressly or impliedly represent in its monthly bills and customer agreements until the end of the Class Period that the Excise Taxes were taxes imposed on customers by New York and required to be collected and remitted to the government by Sprint.

6. Sprint's conduct and practices with respect to the Excise Taxes are misleading, deceptive and unconscionable in violation of the KCPA. By this class action, Plaintiff seeks, both individually and on behalf of the Class, to recover all Excise Taxes charged by and paid to Sprint in violation of the KCPA, as well as corresponding declaratory and injunctive relief, including requiring Sprint to establish that the amounts of Excise Taxes it collected from Plaintiff and the Class did not exceed the amount of Excise Taxes it actually was required to pay and/or remitted to the State of New York.

THE PARTIES

7. Plaintiff is a resident of the City of Mount Vernon, County of Westchester, New York. At all relevant times, Claimant has been a Sprint wireless telephone service customer who

has been charged by and paid to Sprint the Excise Taxes unlawfully, deceptively and unconscionably charged and collected by Sprint, and has been injured thereby.

8. Sprint is a Delaware limited partnership with its principal offices located in Kansas. Sprint is wholly owned by Sprint Corporation (formerly Sprint Nextel Corporation), a Delaware corporation with its principal offices located in Overland Park, 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 offices in Kansas, and the Excise Taxes misleadingly, deceptively and unconscionably collected by Sprint redounded to its benefit and were controlled by Sprint from its principal offices in Kansas.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d), the Class Action Fairness Act of 2005 ("CAFA"), because:

(a) The number of members of the proposed Class Plaintiff seeks to represent is 100 or more, and in fact is conservatively estimated to exceed one million members;

(b) There is diversity of citizenship between any one member of the class (named and unnamed) and Sprint, *viz.,* Plaintiff is a citizen of New York State (as are the vast majority of the members of the Class), while Sprint is a citizen of Delaware and Kansas under CAFA §1332(d)(10); and

(c) The amount in controversy – which may be calculated by aggregating the claims of the putative class members – exceeds $5 million, and based on the electronic data and other facts and information produced or disclosed by Sprint to Plaintiff to date,

Plaintiff believes that the damages awardable to the Class under the KCPA in connection with the claims asserted by Plaintiff in the action exceed $130,000,000.

10. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(c), based on Sprint's "systematic and continuous" business presence within New York State and this District.

CLASS ACTION ALLEGATIONS

11. In connection with the JAMS arbitration asserting claims based on Sprint's Excise Tax practices that was originally commenced by Plaintiff in the JAMS arbitration forum on or about January 4, 2005 (captioned *Emilio, Vincent v. Sprint Spectrum L.P. d/b/a Sprint PCS, Binding Arbitration Reference # 1425000444* (the "Arbitration")), the Arbitrator issued a Partial Final Award dated March 10, 2011 in which she reaffirmed her October 25, 2006 Decision on Enforceability of Class Action Preclusion Clause finding that the class action preclusion clause in the relevant arbitration agreement included in Sprint's standard form customer agreement was unenforceable under the KCPA -- which the Arbitrator determined was applicable to the asserted Excise Tax claims under the terms of the Customer Agreement -- and, therefore, that Plaintiff could not "be compelled to proceed with a bilateral arbitration, and must be given the opportunity to pursue his class claims in a court action."

12. The Arbitrator's Partial Final Award, including the Arbitrator's finding that Plaintiff "must be given the opportunity to pursue his class claims in a court action," was confirmed under the Federal Arbitration Act by the Opinion and Order dated February 11, 2014 by the Honorable J. Paul Oetken of the United States District Court for the Southern District of New York. *See Emilio v. Sprint Spectrum L.P. d/b/a Sprint PCS,* No. 11-cv-3041 (JPO), 2014 WL 902564 (S.D.N.Y. Feb. 11, 2014) (Dkt. #46). The Opinion and Order also granted Plaintiff

leave to file a Class Action Complaint in the action, which Plaintiff did file on February 25, 2014 (Dkt. #48). Judgment was entered on the February 11, 2014 Opinion and Order on March 7, 2014 (Dkt. #50), and the Judgment was affirmed by the Second Circuit on November 12, 2014. *See Emilio v. Sprint Spectrum L.P. d/b/a Sprint PCS,* No. 14-732-cv, 582 Fed. Appx. 63 (2d Cir. 2014).

13. In furtherance of the Arbitrator's Partial Final Award and the Court's February 11, 2014 Opinion and Order and March 7, 2014 Judgment affirmed by the Second Circuit, Plaintiff brings this action, individually and as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of the following class:

> All Sprint wireless telephone service customers included within the definition of "consumers" in KCPA 50-624 (*i.e.,* individuals, husbands and wives, sole proprietors and family partnerships) who, during the period commencing on January 4, 2002 and continuing to June 30, 2007 (the "Class Period"), paid "New York State Excise Tax" ("Excise Tax(es)") as part of their monthly charges. Excluded from the Class are Sprint, and Sprint's directors, officers, parents, affiliates, subsidiaries and successors.

14. Plaintiff and the Class satisfy the requirements for class certification pursuant to Fed. R. Civ. P. Rules 23(a) and 23(b)(3).

15. The members of the Class are so numerous that joinder of all members is impracticable, as required by Fed. R. Civ. P. 23(a)(1). Although the number of members of the Class is not precisely known to Plaintiff at this time and can be determined only from appropriate discovery, it is reasonably estimated based on Sprint's status as the third largest wireless carrier in the United States during the relevant period, the size of the population of New York State, and the duration of the Class Period, that the Class members number in excess of 1 million customers.

16. Common questions of law and fact exist as to all members of the Class, as required by Rule 23(a)(2), including the following:

(a) Whether Sprint's practices in connection with the Excise Taxes are misleading, deceptive and unconscionable in violation of the KCPA;

(b) Whether Sprint should be required to account for the Excise Taxes collected from the members of the Class to ensure that these amounts did not exceed the amount of Excise Taxes Sprint actually was required to pay and/or remitted to the State of New York; and

(c) The appropriate measure of damages and other amounts and relief awardable under the KCPA.

17. Plaintiff is a Sprint wireless telephone customer who has paid the Excise Taxes, and thus is a member of the Class he seeks to represent. Plaintiff's claims are typical of the claims of the members of the Class, as required under Fed. R. Civ. P. 23(a)(3). The harm suffered by Plaintiff and all other members of the Class was and is caused by the same conduct, *viz.,* Sprint's misleading, deceptive and unconscionable Excise Tax practices in violation of the KCPA.

18. Plaintiff will fairly and adequately represent and protect the interests of the Class as required under Fed. R. Civ. P. 23(a)(4), just as he has done during the past ten-plus years since the Arbitration was commenced in 2005. Plaintiff has no interests antagonistic to or in conflict with the Class, and Plaintiff has retained competent counsel, experienced in consumer and commercial class actions and wireless telecommunications law, to further ensure such protection and who has to date prosecuted, and will continue to prosecute, this action vigorously.

19. The Class satisfies the requirements of Rule 23(b)(3), because:

(a) The common questions under Rule 23(a)(2) predominate over any questions that may affect individual Class members, particularly in light of the substantial uniformity of the relevant documents and practices among all Class members.

(b) The class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the monthly Excise Taxes imposed on the members of the Class are not substantial and the monetary damages suffered by those Class member individually are small, the expense and burden of individual litigation make it impossible for individual members of the Class to seek redress from the federal courts for Sprint's wrongful conduct in connection with its imposition and collection of the Excise Taxes. If class treatment of these claims is not available, Sprint would be able to retain millions of dollars of misleadingly, deceptively and unconscionably collected Excise Taxes, and will otherwise escape liability for its wrongdoing in connection with its practices regarding its imposition and collection of the Excise Taxes.

(c) The Class is readily definable, and prosecution of this action as a class action will reduce the possibility of repetitious litigation. Information concerning the Class members and the amount of Excise Taxes Sprint has charged and collected from them is found in structured data readily available from Sprint's computerized books and records. Plaintiff knows of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.

STATEMENT OF FACTS

20. Although not known to Emilio when he commenced the JAMS Arbitration in January 2005, as a result of the investigation of the Attorneys General of 32 states, including

Kansas, as to whether Sprint's advertising, sales and billing practices violated those states' consumer protection and trade practice statutes and related regulations, Sprint entered into a binding July 2004 AVC with the Attorneys General which required Sprint, *inter alia*: (i) to clearly and conspicuously disclose, during any sales transaction (defined AVC ¶13) with new customers and with existing customers renewing, extending or changing their plan terms, "the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of . . . additional monthly discretionary charges" assessed on the basis of locale, including the Excise Taxes, and to provide the customers with written materials regarding these charges (AVC ¶18(l), ¶¶18-22); and (ii) on customer bills, to "not represent, expressly or by implication, that discretionary cost recovery fees are taxes" (AVC ¶36(b)).

21. The AVC, at ¶9, defined the term "clear and conspicuous" in relevant part as follows:

> A statement is ··clear and conspicuous" if it is disclosed in such size, color, contrast, [and] location …that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner.

22. In March 2005, some two months after Emilio commenced the JAMS Arbitration, the FCC issued *Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 20 FCC Rcd 6448, 2005 WL 645905 (FCC Mar. 10, 2005) ("*TIB Second Report*"). The *TIB Second Report* specifically addresses the practices of wireless telephone carriers with respect to discretionary line item charges for costs not governmentally required to be collected from customers and remitted to the government -- like the Excise Tax charges challenged by Emilio in

this action. The FCC confirmed that these charges are subject to Section 201(b) of the Federal Communications Act, 47 U.S.C. §201(b), and the FCC's rules, including 47 C.F.R.§ 64.2401(b).[1] The FCC's declaratory ruling unambiguously states the FCC's conclusions regarding the imposition of such line item charges, 2005 WL 645905, at *1, ¶1:

> [We] reiterate that non-misleading line items are permissible under our rules; *[we] reiterate that it is misleading to represent discretionary line item charges in any manner that suggests such line items are taxes or charges required by the government*; [and we] clarify that the burden rests upon the carrier to demonstrate that any line item that purports to recover a specific governmental or regulatory program fee conforms to the amount authorized by the government to be collected. (emphasis added).

23. The *TIB Second Report* placed the burden on the wireless "carrier to demonstrate that any line item that purports to recover a specific governmental or regulatory program fee conforms to the amount authorized by the government to be collected" because of instances where carriers were imposing and collecting from customers discretionary line item charges that exceeded the amounts the carriers actually had been required to pay to the relevant government entities.

24. Sprint made several submissions and public comments to the FCC in connection with the *TIB Second Report* proceedings. Among its statements in these submissions, Sprint:

(i) "acknowledge[d] that States have an important role, through their laws of general applicability, in protecting consumer rights[, and that] nothing in the [*TIB Second*

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[1] 47 U.S.C. §201(b) and 47 C.F.R. §64.2401(b) provide in pertinent part:

> §201(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful[.]
>
> §64.2401(b) *Descriptions of billed charges.* Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

Report] would prevent states from prosecuting carriers for false or misleading statements under principles of general contract law or consumer protection statutes";

(ii) did not "oppose point of sales disclosures" including those it was obligated to make under the AVC;

(iii) agreed that the AVC requirement that Sprint disclose "the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of . . . additional monthly discretionary charges" "[f]or surcharges applied, locally" would "provide consumers with the information necessary to make informed decisions"; and

(iv) agreed with the FCC's proposed distinction for disclosure purposes between "mandated" charges "that a carrier is '*required* to collect directly from customers, and remit to federal, state and local governments'" (emphasis in original) and "non-mandated," discretionary government cost recoupments, and stated that this definition of "mandated" charges was most consistent with the requirements of the AVC.

25. During motion practice in the JAMS Arbitration, Sprint also submitted in support of one of its motions an Order by the New York State Public Service Commission ("PSC") entitled "Proceeding on Motion of the Commission to Examine the Application of Taxes and Surcharges to Customer Bills by Telecommunications Carriers," dated January 5, 2006 (one year after Plaintiff commenced the Arbitration). This PSC Order stated in relevant part:

> Jurisdictional authority underlying taxes and surcharges include federal, state, county and municipal laws. Some taxes, such as the State Excise Tax, are levied upon the utility, while other taxes, such as sales tax, are levied upon consumers. Consumer taxes differ from utility taxes in that monies from consumer taxes are collected separate from general revenues and forwarded to the taxing authorities, while utility taxes can be collected either through the use of a surcharge or rolled into general utility rates as part of its overall expenses.
>
> * * *

> Over time, telephone bills have become more difficult to understand as new surcharges came into being and nomenclature among telephone companies became inconsistent. With a long list of federal, state and local surcharges that can possibly be itemized on a telephone bill, it is not surprising that the Commission receives numerous inquiries from consumers regarding these items.
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> We have also become concerned that with increasing competition for local telephone services consumers may not be getting complete and accurate information concerning the "bottom line" of the telephone bill, or what their monthly bills would total including all taxes and surcharges. . . . Because of these concerns, we examined how taxes and surcharges appear on bills and in tariffs, in an effort to determine if clarity can be obtained in this area.
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> * * *
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> Perhaps the most confusing issue we found was the variety of names used by telephone companies to describe the same tax or surcharge. For example, "State Gross Revenue Tax Surcharge," … is also referred to as the N.Y. State Surcharge, NYS Surcharge Tax, Excise Tax, Gross Receipts Tax, or Statutory Gross Receipts.
>
> Additional combinations and permutations were also discovered. With just a few exceptions, all taxes and surcharges are named in a wide variety of fashions on bills. *While it can be confusing, it can also be misleading as taxes and surcharges are conceptually different.* (emphasis added)

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

27. Thus, the New York State Excise Tax line item charges imposed by Sprint are purely discretionary charges subject to the requirements of the *TIB Second Report* and the AVC, as well as all requirements of state consumer protection laws, including the KCPA.

28. During the entirety of the Class Period, Sprint failed to clearly and conspicuously disclose that the Excise Taxes were not taxes or charges required to be collected from customers by Sprint and remitted to the government, and instead misleadingly and deceptively represented, expressly and/or by implication, that the Excise Taxes were taxes mandated by the government to be collected from customers by Sprint and remitted to the government.

29. For example, no language was included in the substantially uniform versions of the customer agreement in effect during the Class Period prior to June 1, 2003 that identified and discussed "excise taxes" or that disclosed that Sprint kept any of the monies collected from its customers for the excise taxes, fees and other discretionary charges it was imposing. Thereafter, in the substantially uniform versions of the customer agreement in effect from June 1, 2003 through December 31, 2006, Sprint expressly included "excise taxes" as one of the taxes, along with sales, use and gross receipts taxes, that are "levied by or remitted directly to federal, state or local authorities, or foreign government on Services." Furthermore, Sprint described all of these taxes in one paragraph, and then used a separate, different paragraph to describe "surcharges that we collect and keep to pay for the costs of complying with governmental mandates" like Universal Service, number pooling and portability and Enhanced 911 services charges – but not excise taxes. Beginning on January 1, 2007 to the end of the Class Period, Sprint simply removed any reference to the excise taxes from these paragraphs of its customer agreement.

30. Additionally, during the entirety of the Class Period, every Excise Tax line item charge on customer bills expressly described the charge as being imposed for "New York State Excise Tax." It was not until on or about and after July 1, 2007, 2 1/2 years into the Arbitration and three years after Sprint's entry into the AVC, that Sprint finally eliminated the reference to

"New York State Excise Tax" on its customer bills, and renamed the charge "New York State – Telecomm Excise Recovery" to eliminate any implication that the charges were taxes—even though it represented to the FCC in its public comments in 2005 in connection with the *TIB Second Report* that it was required "to abide" with its obligations under the AVC.

31. Nor were any of the disclosures on the Sprint monthly customer bills that purported to explain the difference between taxes and surcharges "clear and conspicuous" as defined in the AVC, or readily understandable. Instead, these "disclosures" were "buried" in extremely small, difficult-to-read print in the middle on the back of the first page of the bill—where no one was likely to see or read them because they were completely removed from the detailed billing information with the taxes and surcharges on the third page of the bill. The third page of the bill with the detailed billing information (which was numbered "Page 2 of x" of the bill) was the first thing a customer would see when turning the first page of the bill (which was numbered "Page 1 of x" of the bill)—it followed directly from the billing information on the first page, and it did *not* direct the customer backwards to the unnumbered back of the first page of the bill for the "explanation" of the distinction between the charges. Until February, 2003, no distinction was drawn or explained between taxes and surcharges in the monthly bill explanation "buried" on the back of the first page of the bill. And when Sprint did thereafter attempt to explain the difference, it did so with multiple references to "federal and state mandates"—-even though Sprint agreed with the FCC in connection with the *TIB Second Report* that "mandated charges" were most closely defined in accordance with the AVC as charges "that a carrier is '*required* to collect directly from customers, and remit to federal, state and local governments" (emphasis in original).

32. Furthermore, at no time during the Class Period, including at no time after Sprint entered into the July 2004 AVC, did Sprint provide during and after sales transactions with new customers and existing customers who were renewing, extending or changing their plan terms the disclosures required under the AVC advising customers about "the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of . . . additional monthly discretionary charges" assessed on the basis of locale, including the Excise Taxes—an obligation Sprint represented to the FCC in connection with the *TIB Second Report* that it did not oppose, and which it agreed would "provide consumers with the information necessary to make informed decisions."

FIRST CLAIM FOR RELIEF

(Violations of KCPA)

33. Plaintiff realleges and reincorporates herein each and every allegation in the preceding paragraphs of this Amended Complaint as if set forth verbatim.

34. KCPA 50-626(a) prohibits Sprint from "engag[ing] in any deceptive act or practice in connection with a consumer transaction."

35. KCPA 50-626(b) declares deceptive acts or practices to be violations of the KCPA, "whether or not any consumer has in fact been misled," including but not limited to, under 50-626(b)(1) "representations made knowingly or with reason to know that . . . services have . . . sponsorship, approval [or] characteristics . . . that they do not have," or that a service supplier like Sprint "has a sponsorship, approval, status, affiliation or connection that [it] does not have."

36. KCPA 50-626(b)(2) and (b)(3), respectively, further define deceptive acts or practices to include "the willful use, in any oral or written representation, of exaggeration,

falsehood, innuendo or ambiguity as to a material fact," and "the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact."

37. KCPA 50-627(a) prohibits Sprint from "engag[ing] in any unconscionable act or practice in connection with a consumer transaction," and states that "[a]n unconscionable act or practice violates this act whether it occurs before, during or after the transaction." Under KCPA 50-627(b), "[t]he unconscionability of an act or practice is a question for the court [and in] determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know."

38. KCPA 50-634(a) and (c) create "private remedies" entitling a consumer aggrieved by a violation of the KCPA to bring an action individually and/or on behalf of a class seeking declaratory, injunctive and appropriate ancillary relief with respect to an act or practice that violates the KCPA.

39. KCPA 50-634(d)(1) and (d)(2) entitle a consumer who has suffered a loss as a result of a violation of the KCPA to bring a class action for the damages caused by an act or practice that violates KCPA 50-626 or 50-627.

40. KCPA 50-634(d)(3) entitles a consumer to bring a class action for damages if the relevant act or practice "with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based."

41. KCPA 50-634(e) authorizes the award of reasonable attorneys' fees to a prevailing consumer with respect to an act or practice that violates the KCPA.

42. KCPA 50-625 provides that "a consumer may not waive or agree to forego rights or benefits under [the KCPA]."

43. Sprint's practices in connection with the Excise Taxes are misleading, deceptive and unconscionable in violation of the KCPA. In particular, the fact that Sprint continued its misleading and deceptive practices regarding the Excise Taxes for several years after entering into the AVC and after the issuance of the *TIB Second Report* until the end of the Class Period, and that its practices were inconsistent with Sprint's 2005 comments to the FCC in connection with the *TIB Second Report* that misleadingly represented and suggested that Sprint was complying with its point of sale and monthly billing disclosure obligations under the AVC, confirms that Sprint's conduct was both willful and unconscionable.

44. Plaintiffs and the Class have been damaged in, and Sprint is liable for, an amount to be determined at trial. However, based on the electronic data and other facts and information produced or disclosed by Sprint to Plaintiff to date, Plaintiff believes that the damages awardable under the KCPA in connection with the claims asserted by Plaintiff in the action exceed $130,000,000.

45. Additionally, Sprint should be required to establish that the amounts of Excise Taxes it collected from Plaintiff and the Class did not exceed the amount of Excise Taxes it actually was required to pay and/or remitted to the State of New York.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class identified herein, prays for relief, and judgment in his and their favor, as follows:

A. Certifying this action as a class action pursuant to Fed. R. Civ. P. Rules 23(a) and 23(b)(3), with Plaintiff certified as representative of the Class and Plaintiff's counsel designated as counsel for the Class;

B. Declaring that Sprint's acts and practices with respect to the Excise Taxes as described herein violate the KCPA;

C. Awarding damages to Plaintiff and the Class in an amount to be determined at trial, although based on the electronic data and other facts and information produced or disclosed by Sprint to Plaintiff to date, Plaintiff believes that the damages awardable under the KCPA in connection with the claims asserted by Plaintiff in the action exceed $130,000,000;

D. Additionally, awarding punitive damages to Plaintiff and the Class, based on Sprint's knowing and willful failure to comply with its obligations under the AVC and *TIB Second Report* to clearly and conspicuously disclose and describe the Excise Taxes in a non-misleading, non-deceptive manner, and based on Sprint's 2005 comments to the FCC in connection with the *TIB Second Report* that misleadingly represented and suggested that Sprint was complying with it point of sale and monthly billing disclosure obligations under the AVC, when it was not;

E. Requiring Sprint to establish that the amounts of Excise Taxes it collected from Plaintiff and the Class did not exceed the amount of Excise Taxes it actually was required to pay and/or remitted to the State of New York;

F. Awarding the costs and disbursements incurred in connection with Plaintiff's prosecution of the arbitration and this action, including reasonable attorneys' fees and expenses;

G. Awarding pre- and post-judgment interest; and

H. Granting such other and further relief as the Court deems just and proper.

Dated: September 8, 2015

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