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

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ELWOOD HERTZOG III, Individually and
on behalf of all the members of the Class of
Persons similarly situated,

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Plaintiffs,

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v.

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SPRINT SPECTRUM L.P., a foreign
corporation, and SPRINT-NEXTEL
CORPORATION,

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Defendants.

NO. 07-2-24530-8 SEA

COMPLAINT FOR ENFORCEMENT
AND BREACH OF SETTLEMENT
AGREEMENT AND FINAL ORDER AND
JUDGMENT

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Plaintiff Elwood Hertzog III alleges against Defendants Sprint Spectrum L.P., known as
"Sprint PCS," and Sprint Nextel Corporation (referred to collectively herein as "Sprint"):

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I. PARTIES

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1.1 Plaintiff Elwood Hertzog III is a resident of King County, Washington.

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1.2 Defendant Sprint Spectrum L.P is a foreign corporation which provides cellular or
mobile phone services to consumers in the State of Washington. Sprint Spectrum is owned
and/or operated by Defendant Sprint Nextel Corporation.

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COMPLAINT FOR ENFORCEMENT AND BREACH
OF SETTLEMENT AGREEMENT AND FINAL
ORDER AND JUDGMENT - 1

BJT No. 36

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1 argument at the May 2000 hearing in opposition to certification. Sprint, through its attorney of
2 record, represented to the Court that class certification should not be granted and was
3 unnecessary, because Sprint had stated in writing to the Court, its subscribers, and other people
4 around the country that Sprint was going to fix the problem of improperly billing consumers a
5 city tax, who did not reside within the boundaries of any city that charged such a tax.

6 2.4 Sprint argued further in opposition to class certification at the May 2000 hearing
7 that Sprint had performed a “scrub” program of its customers in Washington state to correctly
8 identify customers who did not live within a city that charged a city tax, and had redone
9 addresses for approximately 40,000 of the customers to correctly show whether the customer did
10 or did not live within a city that charged a city tax. Sprint further argued that this “scrub” of the
11 addresses for Washington customers was “within a couple percentage points of perfect.”

12 2.5 During the course of its participation in Hertzog v. Sprint Spectrum L.P., King
13 County Superior Court Cause No. 99-2-11449-3 SEA, Sprint asserted that it was Sprint’s
14 position that “Sprint Spectrum has the right and obligation to correct any errors in (its) billing
15 system, and to credit any customers who may have been charged taxes for jurisdictions in which
16 they do not reside.” This statement was a true and accurate statement of an obligation of Sprint to
17 its customers.

18 2.6 On or about March 16, 2001, the King County Superior Court entered summary
19 judgment in Hertzog v. Sprint Spectrum L.P., King County Superior Court Cause No. 99-2-
20 11449-3 SEA on liability on the claims of the Plaintiff, Mr. Hertzog, and the Class for restitution,
21 breach of contract and Consumer Protection Act.

22 2.7 On or about April 19, 2001, Plaintiff Hertzog and Sprint settled the action based
23 in material part on Sprint’s representation that it had performed a “scrub” of all Washington
24 customers and that the current information was within a couple of percentage points of perfect
25 with regard to properly locating customers as living within a city that charged a city tax. The
26 settlement was based in material part on Sprint’s assertion that the “scrub” had solved the

1 problem of improperly charging customers a city tax, who did not live within the boundaries of a
2 city that charged a city tax, that the new "scrub" program would henceforth accurately locate
3 consumers who lived within cities that charged a city tax, and that, henceforth, the problem of
4 improperly charging consumers who did not live in a city that charged a city tax was solved
5 within a couple percentage points.

6 2.8 On or about May 11, 2001, Mr. Hertzog and Sprint filed a "Joint Motion for
7 Approval of Settlement Class and Dismissal." In the motion, Sprint reiterated its prior
8 representations that the "scrub" program had corrected the assigned taxing jurisdictions for
9 Washington consumers.

10 2.9 On or about May 14, 2001, the Court granted preliminary of the class settlement
11 based upon the parties' joint motion and set a July 30, 2001 hearing date for consideration of
12 final approval of the settlement after notice to the class had been accomplished.

13 2.10 In July 2001, Plaintiff Hertzog and Sprint filed a joint motion for final approval of
14 the settlement.

15 2.11 On or about July 30, 2001, the Court conducted a hearing on the parties' joint
16 motion for final approval of the settlement. In seeking final approval of the class settlement,
17 Sprint represented to the Court that the problem of improperly charging consumers a city tax,
18 who did not live in a city that charged a city tax, had been solved within a couple percentage
19 points. Sprint represented that the new program it was using for assigning taxing jurisdictions to
20 Washington consumers was perfect to within a few percentage points.

21 2.12 On July 30, 2001, the Court granted the parties joint motion for final approval of
22 the class settlement in the action and dismissed the action.

23 2.13 Contrary to its representations in obtaining settlement and final approval of the
24 settlement in the Hertzog v. Sprint Spectrum L.P. action, Sprint's "scrub" program did not
25 accurately assign taxing jurisdictions to Washington consumers to within a few percentage points
26 and Sprint continued to improperly charged Washington customers a city tax, who do not reside

1 in a city that charges a city tax. From August 1, 2001 to present, Sprint has not accurately
2 assigned taxing jurisdictions to Washington consumers and has continued to improperly collect
3 from consumers city taxes, who did not reside in a city that charges such a tax..

4 2.14 Contrary to its representations in obtaining approval of the settlement in the
5 Hertzog v. Sprint Spectrum L.P. action, Sprint did not solve the problem of improperly charging
6 Washington customers a city tax, who do not reside in a city that charges a city tax.

7 2.15 Contrary to its representations in obtaining settlement and final approval of the
8 settlement in the Hertzog v. Sprint Spectrum L.P. action, Sprint's new program, and its "scrub"
9 program, did not produce accurate assignment of taxing jurisdictions for its Washington
10 customers within a couple percentage points of perfect.

11 III. CLAIMS AND CAUSES OF ACTION

12 A. BREACH OF CONTRACT

13 3.1 Defendants breached the settlement agreement in Hertzog v. Sprint Spectrum
14 L.P., King County Superior Court Cause No. 99-2-11449-3 SEA, by improperly charging
15 Washington consumers a city tax, who do not reside in a city that charges a city tax.

16 3.2 Defendants have breached the settlement agreement in Hertzog v. Sprint
17 Spectrum L.P., King County Superior Court Cause No. 99-2-11449-3 SEA, by not accurately
18 assigning taxing jurisdictions to Washington consumers.

19 3.3 Defendants have breached the covenant of good faith and fair dealing implied
20 within the settlement agreement.

21 3.4 Defendants failed to provide the benefits to Plaintiff and the Class in Hertzog v.
22 Sprint Spectrum L.P., King County Superior Court Cause No. 99-2-11449-3 SEA consistent with
23 the settlement agreement and as represented by Defendants in obtaining settlement.

24 B. VIOLATION OF FINAL ORDER AND JUDGMENT

25 3.5 Defendants breached the Court's Order and Final Judgment entered in Hertzog v.
26 Sprint Spectrum L.P., King County Superior Court Cause No. 99-2-11449-3 SEA, by improperly

1 charging Washington consumers a city tax, who do not reside within the boundaries of a city that
2 charges a city tax.

3 3.6 Defendants have breached the Court's Order and Final Judgment entered in
4 Hertzog v. Sprint Spectrum L.P., King County Superior Court Cause No. 99-2-11449-3 SEA, by
5 not accurately assigning taxing jurisdictions to Washington consumers.

6 3.7 Defendants have failed to comply in good faith with the Order and Judgment
7 granting final approval by failing to provide the benefits to Plaintiff, the Class and Defendants'
8 Washington consumers contemplated by the Court's approval and as represented by Defendants
9 in obtaining settlement.

10 C. UNJUST ENRICHMENT

11 3.8 Defendants have been unjustly enriched by improperly charging Washington
12 consumers a city tax, who do not reside in a city that charges a city tax after entering into the
13 settlement agreement, and after entry of the final order approving and judgment in Hertzog v.
14 Sprint Spectrum L.P., King County Superior Court Cause No. 99-2-11449-3 SEA.

15 3.9 Defendants have been unjustly enriched because they have failed to comply with
16 the settlement agreement and with the Court's Final Order and Judgment approving the
17 settlement as contemplated, consistent with its representations to the Court.

18 3.10 It is inequitable to permit Defendants to retain the improperly collected city taxes
19 from Washington consumers which should not have been collected had Defendants complied
20 with their representations to the Court in obtaining the Final Order and Judgment approving the
21 class wide settlement in Hertzog v. Sprint Spectrum L.P., King County Superior Court Cause
22 No. 99-2-11449-3 SEA. Accordingly, Defendants should be ordered by way of injunctive relief
23 to disgorge the monies obtained and by which they have been unjustly enriched.

24 D. VIOLATION OF CONSUMER PROTECTION ACT

25 3.11 Defendants Sprint engaged in a false, deceptive and/or unfair consumer practice
26 by improperly charging Washington consumers a city tax, who do not reside within the

1 boundaries of a city that charges a city tax after entering into the settlement agreement, and after
2 entry of the final order approving and judgment in Hertzog v. Sprint Spectrum L.P., King County
3 Superior Court Cause No. 99-2-11449-3 SEA, and in violation of its representations to the Court
4 in obtaining settlement and Court approval of the settlement.

5 **E. RESTITUTION**

6 3.12 Defendants have failed to provide the benefits represented in obtaining the
7 Court's Final Order and Judgment approving the class settlement in Hertzog v. Sprint Spectrum
8 L.P., King County Superior Court Cause No. 99-2-11449-3 SEA.

9 3.13 It is inequitable to permit Defendants to retain the improperly collected city taxes
10 from Washington consumers which should not have been collected had Defendants complied
11 with their representations to the Court in obtaining the Final Order and Judgment approving the
12 class wide settlement in Hertzog v. Sprint Spectrum L.P., King County Superior Court Cause
13 No. 99-2-11449-3 SEA. Defendants should be ordered by way of injunctive relief to provide
14 restitution of the monies improperly obtained.

15 **VI. REQUEST FOR JUDGMENT**

16 Plaintiff Hertzog incorporates by this reference each and every allegation made above
17 and requests that judgment be entered against Defendants as follows:

18 1. For injunctive relief requiring Defendants to refund all Washington consumers,
19 who were improperly charged a city tax in contravention of the intent, purpose and
20 representations made by Sprint in obtaining the settlement agreement, final order and judgment
21 entered in Hertzog v. Sprint Spectrum L.P., King County Superior Court Cause No. 99-2-11449-
22 3 SEA;

23 2. For injunctive relief requiring Defendants to correct the tax assignments of all
24 Washington consumers who were improperly charged a city tax in contravention the settlement
25 agreement, final order and judgment entered in Hertzog v. Sprint Spectrum L.P., King County
26 Superior Court Cause No. 99-2-11449-3 SEA;

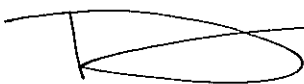
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3. For injunctive relief enjoining Defendants from improperly charging city taxes from Washington consumers who do not reside within the borders of a city that charges a city tax.

4. Awarding Plaintiff reasonable attorneys fees and costs, as well as statutory fees and costs.

5. Awarding Plaintiff such further or additional relief as may be appropriate.

DATED this 26th day of July, 2007.

By: 

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