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**IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY**

**05-2-24685-5 SEA**

KATHLEEN LOWDEN and JOHN  
MAHOWALD, individually and on behalf of  
all the members of the class of persons  
similarly situated;

Plaintiffs,

v.

T-MOBILE USA, INC. a foreign  
corporation,

Defendant.

CAUSE NO.

CLASS ACTION COMPLAINT FOR  
BREACH OF CONTRACT, CPA,  
RESTITUTION, INJUNCTIVE RELIEF  
AND DAMAGES

**I. INTRODUCTION**

1.1 Plaintiffs bring this action on behalf of themselves and all similarly situated persons who, while residing in the United States, (a) contracted with defendant T-Mobile USA, Inc. for cellular telephone services, who were charged a "Universal Service Fund Fee" and/ or Regulatory Cost Recovery Fee" in addition to the posted and advertised price of the service (the "USF-RCR Class"); and/or (b) were charged by T-Mobile for telephone calls during a billing period other than the billing period in which the calls were made (the "Out of Sync Billing Class"); and/or (c) were improperly charged roaming fees, long distance fees, T-Mobile to T-Mobile fees, weekend and/or nighttime fees that were supposed to be free of charge. Plaintiffs

1 bring this action for breach of contract and violation of the Consumer Protection seeking  
2 damages, restitution and injunctive relief.

3 1.2 Defendant offer and provide mobile telephone services to United States customers  
4 at posted and advertised prices.

5 1.3 From Approximately March 1, 1998 to the present (the "USF-RCR Class  
6 Period"), Defendant imposed "USF-RCR Fees" on its United States customers, which was not  
7 included in the posted and advertised prices of its services and not disclosed to customers.

8 1.4 During the USF-RCR Class Period, Defendant increased the amount, cost or  
9 percentage rate of the "USF-RCR Fees" imposed on existing customers during the contract  
10 period without notifying the customer of the increase and without providing the customer with  
11 any additional services beyond the services already being provided under the contract.

12 1.5 During the USF-RCR Class Period, defendant was not required by law to impose  
13 the "USF-RCR Fees" on its customers and the "USF-RCR Fees" were not a tax.

14 1.6 The "USF-RCR Fees" were created and imposed by defendant on its customers,  
15 to cover the cost of this ordinary business expense. However, defendant did not include this  
16 ordinary business expense in its advertised cost of wireless service, but rather, hid it in its billing  
17 statements and made it appear as though it was a government tax imposed on the customer.

18 1.7 During the USF-RCR Class Period, defendant identified the "USF-RCR Fees" to  
19 customers as a tax or government-mandated charge rather than merely its cost of doing business.

20 1.8 As reported by the Associated Press: "One problem for consumers: Defendant's  
21 advertised rates don't include extra fees." "The explosion of line items has made it all but  
22 impossible for consumers to compare rates and shop around," FCC Commissioner Michael J.  
23  
24  
25

1 Copps said in March Of 2004. "You need a lawyer and an accountant -- preferably both -- to root  
2 out what you're being charged for and why." Frustrated customers have a simple request, voiced  
3 by Sherri Heckman of Reading, Pennsylvania, in comments filed with the FCC. "Wireless  
4 providers should include their federal regulatory fees in the monthly rates so consumers know  
5 what their monthly bill will be. <sup>1</sup>"

6  
7 1.9 On information and belief, defendant profited from it collection of the UFSF-RCR  
8 Fees. As reported by the Associated Press on March 24, 2004: "T-Mobile USA Inc.'s first quarter  
9 financial results looked great this year, but it wasn't because customers were spending more time  
10 chatting on their cell phones. The wireless company's revenues were up \$1 per customer  
11 compared with the previous quarter. That was because T-Mobile, for the first time, counted as  
12 revenues two fees it tacks onto customer bills. Without those surcharges, the average revenue per  
13 customer would have dropped. The surcharges certainly make T-Mobile more attractive to  
14 investors -- they added \$58 million in revenue during the quarter. The fees aren't taxes, though  
15 they may look that way on your bill. Wireless, long-distance and local phone service companies  
16 use fees like these chiefly to recoup normal business expenses, including property taxes and the  
17 cost of posting their rates on the Web. And that's led to a challenge before the Federal  
18 Communications Commission by consumer advocates including officials from nine states and  
19 the District of Columbia. <sup>2</sup>"

20  
21 1.10 Defendant also charge customers a per-minute charge for calls which exceed the  
22 total minutes allotted to the customer as part of the advertised price of the service.

23 <sup>1</sup> Source: Cnn.com -- <http://www.cnn.com/2004/TECH/biztech/08/25/phone.fee.fight.ap/index.html>

24 <sup>2</sup> Source: Cnn.com -- <http://www.cnn.com/2004/TECH/biztech/08/25/phone.fee.fight.ap/index.html>

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