

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE AT&T MOBILITY WIRELESS )  
DATA SERVICES SALES TAX )  
LITIGATION )**

**Case #1:10-cv-02278  
MDL Docket No. 2147  
Honorable Amy J. St. Eve**

**CONSOLIDATED MASTER CLASS ACTION COMPLAINT**

Plaintiffs are filing this Consolidated Master Class Action Complaint solely as an MDL administrative and procedural tool. As such, this pleading is not intended to, nor should it be construed as, superseding or supplanting the operative Complaints in the constituent actions in this MDL proceeding.<sup>1</sup> Plaintiffs, individually and on behalf of all persons and entities similarly situated, by and through the undersigned counsel, state and allege as follows:

**THE PARTIES**

**ALABAMA**

1. Plaintiff Joseph Phillips is a resident of Sterrett, Alabama residing at 4013 Forest Lakes Road, Sterrett, Alabama 35147. Mr. Phillips is an individual consumer who is a customer of the AT&T Mobility, LLC (“AT & T”) and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

2. Plaintiff James Marc Ruggerio is a resident of Birmingham, Alabama residing at 449 St. Anne’s Drive, Birmingham, Alabama 35244. Mr. Ruggerio is an individual consumer

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<sup>1</sup> To the extent this Master Complaint includes any new plaintiffs or claims, the undersigned counsel will amend the operative Complaints in the constituent actions in this MDL proceeding.

who is a customer of the AT&T Mobility, LLC (“AT & T”) and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

3. Plaintiff Ann Marie Ruggerio is a resident of Birmingham, Alabama residing at - 449 St. Anne’s Drive, Birmingham, Alabama 35244. Ms. Ruggerio is an individual consumer who is a customer of the AT&T Mobility, LLC (“AT & T”) and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**ALASKA**

4. Plaintiff Rick Manrique is a resident of Matanuska-Susitna Borough, Alaska, residing at P.O. Box 2811, Palmer, AK 99645. Rick Manrique is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**ARIZONA**

5. Plaintiff Kirk Tushaus is a resident of Maricopa County, Arizona, residing at 11141 East Ironwood Drive, Scottsdale, AZ 85259-4871. Kirk Tushaus is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**ARKANSAS**

6. Plaintiff Dorothy Taylor is a resident of White County, Arkansas, residing at 102 Autumn Circle, McRae, Arkansas. Plaintiff is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**CALIFORNIA – CENTRAL DISRICT**

7. Plaintiff John Simon is a resident of Long Beach, California. Plaintiff is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

8. Plaintiff Karl Simonsen is a resident of San Jose, California. Plaintiff is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

9. Plaintiff Christopher Jacobs is a resident of Los Angeles, California. Plaintiff is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**CALIFORNIA – SAN DIEGO**

10. Plaintiff Donald Sipple is a resident of Montecito, California. Plaintiff is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**COLORADO**

11. Plaintiff William A. Wieland is a resident of Douglas County, Colorado, residing at 7535 Berkshire Lane, Castle Rock, CO 80108. William A. Wieland is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**CONNECTICUT**

12. Plaintiff David Rock is a resident of Fairfield County in the State of Connecticut residing in Stamford Connecticut. Plaintiff is an individual consumer who is a customer of

AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**DISTRICT OF COLUMBIA**

13. Plaintiff Andy Armstrong is a resident of the District of Columbia, residing at 1530 8th Street, N.W., Washington, D.C. 20001. Mr. Armstrong is an individual consumer who is a customer of AT&T Mobility and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**FLORIDA**

14. Plaintiff Adrienne D. Munson is a resident of Wellington, Florida residing at - 12689 Guilford Circle, Wellington, Florida 33414-6504. Ms. Munson is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**GEORGIA**

15. Plaintiff Robert Wilhite is a resident of Gwinnett County, Georgia residing at 1639 Tailmore Lane, Lawrenceville, Georgia 30043-7862. Mr. Wilhite is an individual consumer who is a customer of the AT&T Mobility Corporation (“AT & T”) and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**HAWAII**

16. Plaintiff David Guerrero is a resident of Honolulu County, Hawaii, residing at 1075 Puolo Drive, Honolulu, Hawaii 96818. Mr. Guerrero is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **ILLINOIS**

17. Plaintiff Christopher R. Havron is a citizen of the State of Illinois, residing at 6033 Cherokee Avenue, Glen Carbon, Illinois. Mr. Havron is an individual consumer who is a customer of AT&T and specifically has purchased from AT&T a wireless data plan that permits access to the internet by a radio device.

## **INDIANA**

18. Plaintiff Martin Hoke is a resident of Lake County, Indiana, residing at 728 C, Newcastle Drive, Schererville, Indiana. Martin Hoke is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **IOWA**

19. Plaintiff Penny Annette Wood is a resident of Wapello County, Iowa, residing at 11516 Angle Road, Ottumwa, Iowa 52501. Plaintiff, Penny Annette Wood is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **KANSAS**

20. Plaintiff Christopher Hendrix is a resident of Johnson County, Kansas, residing at 4211 West 74<sup>th</sup> Street, Prairie Village, Kansas 66208. Mr. Hendrix is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **KENTUCKY**

21. Plaintiff Heather Rahn is a resident of Campbell County, Kentucky, residing at 1035 Park Avenue, Newport, Kentucky. Heather Rahn is an individual consumer who is a

customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**LOUISIANA**

22. Plaintiff Heather Mazeitis is a resident of Evangeline Parish, Louisiana, residing at 1125 Beacon Lane, Mamou, Louisiana. Heather Mazeitis is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**MAINE**

23. Plaintiff Jamie Kilbreth is a resident of Cumberland County, Maine, residing at 101 Pine Street, Portland, Maine 04102. Jamie Kilbreth is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

**MARYLAND**

24. Plaintiff Bonnae Meshulam is a resident of Carroll County, Maryland, residing at 3485 Lawndale Road, Reisterstown, Maryland 21136. Ms. Meshulam is an individual consumer who is a customer of AT&T Mobility and specifically has purchased a wireless data plan that permits access to the internet by a radio device, i.e. her iPhone also referred to as a “smart phone.”

**MASSACHUSETTS**

25. Plaintiff Lesley Rock is a resident of Suffolk County, Commonwealth of Massachusetts, residing at 99 Myrtle Street, Boston, MA, 02114, and is a customer of AT&T Mobility, LLC who has purchased a wireless data plan that permits access to the internet through her “I-Phone.”

## **MICHIGAN**

26. Plaintiff Kathy Johnson is a resident of Oakland County, Michigan, residing at 3250 Coolidge Highway, Berkley, MI 48072. Kathy Johnson is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **MINNESOTA**

27. Plaintiff Aaron White is a resident of Blue Earth County, Minnesota, residing at 524 North Fifth Street, #1, Mankato, Minnesota, 56001. White is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the Internet by a radio device.

## **MISSISSIPPI**

28. Plaintiff Michael Bosarge is a resident of Jackson County, residing at 815 Grant Avenue, Pascagoula, MS 39567, and is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the Internet by a radio device.

29. Plaintiff Richard Garner is a resident of Hinds County, residing at 2214 East Manor Drive, Jackson, MS 39211, and individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the Internet by a radio device.

## **MISSOURI**

30. Plaintiff Sara Parker Pauley is a resident of Boone County, Missouri, residing at 5701 Claysville Road, Hartsburg, Missouri. Ms. Pauley is an individual consumer who is a

customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

31. Plaintiff Bert B. Kimble is a resident of Cole County, Missouri, residing 2618 Briarwood Drive, Jefferson City, Cole County, Missouri 65109, (573) 301-4940. Dr. Kimble is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **NEBRASKA**

32. Plaintiff Matthew Cranford is a resident of Lancaster County, Nebraska and is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **NEVADA**

33. Plaintiff Audrey J. Mitchell is a resident of Clark County, Nevada, residing at 8676 Toscana Lane, Las Vegas, Nevada. Ms. Mitchell is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **NEW HAMPSHIRE**

34. Plaintiff Heather Feenstra-Kretschmar is a resident of Strafford County, New Hampshire, residing at 26 Otis Road, Somersworth, New Hampshire 03878. Ms. Feenstra-Kretschmar is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **NEW JERSEY**

35. Plaintiff Ronald Bendian is a resident of Bergen County, New Jersey, residing at 58 Kiersted Place, Mahwah, New Jersey. Mr. Bendian is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits its access to the internet by a radio device.

## **NEW YORK**

36. Plaintiff Jonathan Macy is a resident of New York County, New York, residing at 60 West 66th Street, Apt. 18D, New York, NY. Mr. Macy is an individual consumer who is a customer of the AT&T Defendants and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **NORTH CAROLINA**

37. Plaintiff Adrienne M. Fox is a citizen and resident of Durham, North Carolina. Adrienne Fox is an individual consumer who is a customer of AT&T Mobility LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device. Plaintiff Stephen S. Girard, is a citizen and resident of Mecklenburg County, North Carolina, and is an individual consumer and customer of the Defendant. Plaintiff purchased a wireless data plan that permits access to the internet by radio device.

## **OHIO**

38. Plaintiffs John and Ellie Wallace are residents of Hamilton County, Ohio, both residing at 6592 Lisa Lane, Cincinnati, Ohio 45243. John and Ellie Wallace are individual consumers who are customers of AT&T Mobility, LLC and specifically have purchased a wireless data plan that permits access to the internet by a radio device.

## **OKLAHOMA**

39. Plaintiff Jane F. Edmonds is a resident of Oklahoma County, Oklahoma. Ms. Edmonds is an individual consumer who is a customer of the AT&T Defendant and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

40. Plaintiff Vicki L. Campbell is a resident of Comanche County, Oklahoma. Ms. Campbell is an individual consumer who is a customer of the AT&T Defendant and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

41. Plaintiff Vickie C. Leyja is a resident of Comanche County, Oklahoma. Ms. Leyja is an individual consumer who is a customer of the AT&T Defendant and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **OREGON**

42. Plaintiff Craig Wellhouser is a resident of Clackamas County, Oregon, residing at 1573 8<sup>th</sup> Avenue, West Linn, Oregon 97068. Mr. Wellhouser is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **PENNSYLVANIA**

43. Plaintiff Meri Iannetti is a resident of Allegheny County, Pennsylvania, residing in Pittsburgh, Pennsylvania. Ms. Iannetti is an individual consumer who is a customer of AT&T and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **PUERTO RICO**

44. Plaintiff Gira L. Osorio is a resident of the City of Carolina, Puerto Rico residing at, Urb Parq Ecuestre, S-22 40<sup>th</sup> Street, Carolina, PR 00987. Gira L. Osorio is an individual

consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **RHODE ISLAND**

45. Plaintiff James Shirley is a resident of Providence County, Rhode Island, residing at 21 Arlington Avenue, Providence, Rhode Island 02903. James Shirley is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **SOUTH CAROLINA**

46. Plaintiff Eric Bosse is a resident of Charleston County, South Carolina, residing at 730 Cotillion Place, Mount Pleasant, South Carolina. Mr. Bosse is an individual consumer who is a customer of AT&T and specifically has purchased a wireless data plan that permits access to the internet by a radio device, i.e. his iPhone also referred to as a “smart phone.”

### **TENNESSEE**

47. Plaintiff Randall Shuptrine is a resident of Chattanooga, Tennessee residing at 216 Fairy Trail, Lookout Mountain, Tennessee 37350. Mr. Shuptrine is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **TEXAS**

48. Plaintiff Harvey Corn is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

49. Plaintiff Pam Corn is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **UTAH**

50. Plaintiff Steven A. Devore is a resident of Utah County, Utah residing at 1627 Mountain Oaks Drive, Orem, Utah. Mr. Devore is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **VERMONT**

51. Plaintiff William J. Rogers is a resident of Chittenden County, Vermont. Plaintiff is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

### **VIRGINIA**

52. Plaintiff James K.S. Stewart is a resident of Falls Church, Virginia, residing at 3705 Tollgate Terrace, Falls Church, Virginia 22041. Mr. Stewart is an individual consumer who is a customer of AT&T Mobility and specifically has purchased a wireless data plan that permits access to the internet by a radio device,.

### **WASHINGTON**

53. Plaintiff Matthew J. Vickery is a resident of King County, Washington. Mr. Vickery is an individual consumer who is a customer of AT&T Mobility LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **WEST VIRGINIA**

54. Plaintiff Jill Murphy is a resident of the West Virginia, residing at 1416 Quarier Street, Charleston, West Virginia, 25301. Plaintiff is an individual consumer who is a customer of AT&T Mobility and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **WYOMING**

55. Plaintiff Miracles Meyer is a resident of Teton County, Wyoming, residing at 3725 Morely Drive, Teton Village, Wyoming 83025. Ms. Meyer is an individual consumer who is a customer of AT&T Mobility, LLC and specifically has purchased a wireless data plan that permits access to the internet by a radio device.

## **DEFENDANT**

56. Defendant AT&T Mobility, LLC is a Delaware corporation. Defendant AT&T Mobility, LLC maintains its principle place of business at 5565 Glenridge Connector, Glenridge Two, Atlanta, GA 30342.

## **FACTS COMMON TO ALL COUNTS**

57. AT&T Mobility (“AT&T”) sells wireless data plans to consumers by contract on a monthly payment plan. The purchase of a wireless data plan permits purchasers of the plan to obtain access to the internet remotely either on a computer or on a so-called smart phone such as an iPhone, a Blackberry, or a similar device.

58. AT&T and each Plaintiff entered into written contracts.

59. The written contract is a form contract used by AT&T with all its customers similarly situated to Plaintiffs.

60. The contract between AT&T and each Plaintiff permits AT&T to charge for its services, including internet access, on a monthly basis and permits AT&T to charge each Plaintiff for all applicable and legally due federal, state and local taxes.

61. The contract does not permit AT&T to charge Plaintiffs for “taxes” that are not due under law, including taxes for access to the internet.

62. Where access is by computer only, AT&T charges a monthly fee for the use of a datacard. The datacard permits its user to connect a computer to the internet wirelessly through a radio device embedded in the computer or through a device that connects to the computer through a PCMCIA card or USB port. The data card does not transmit voice or pictures independently of the internet.

63. Where AT&T’s wireless data plans are sold to owners of smart phones, AT&T bills for internet access with a separate line item on the AT&T monthly bill. Generally speaking, the plans cost consumers \$30 per month.

64. For certain kinds of access, AT&T charges owners of smart phones \$45 per month for internet access. These “enterprise” plans permit users to access dedicated email servers through the internet.

65. AT&T states the charges for internet access as a separate charge on its bills to customers.

66. The Internet Tax Freedom Act, 47 U.S.C. § 151 (1998) as amended, imposes a national moratorium on state and local government taxation on internet access. “No State or political subdivision thereof shall impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2014: ... (1) Taxes on Internet access.”

67. Under the Internet Tax Freedom Act (“ITFA”), the phrase “internet access” means: “a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet; (B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold.-- (i) to provide such service; or (ii) to otherwise enable users to access content, information or other services offered over the Internet[.]”

68. Despite the prohibition on taxation of internet access under state and federal law imposed by the ITFA, AT&T improperly and illegally charges its customers state and/or local sales tax on internet access on its monthly bills in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming.

69. For purposes of this Master Complaint, the term “Class” will refer to the claim that AT&T violated the ITFA on a national basis as set out in Count I. Subclasses will be described for each state. Each state-specific subclass will aver violations of state specific law. Thus, the term “subclass” will refer to state-specific subclasses pleaded below.

### **CLASS ACTION ALLEGATIONS**

70. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 on behalf of a Class and Subclasses consisting of all consumers who entered into a contract with AT&T for the provision of internet access through a smart phone or a wireless data card and who

were charged tax on internet access in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming.

71. Plaintiffs are members of the Class which they seek to represent.

72. The Consolidated Master Class Action Complaint seeks relief for a Class of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Class are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

73. The Class alleges a violation of the Internet Tax Freedom Act by AT&T as set out in Count I.

74. The Class consists of millions of individuals and therefore is so numerous that joinder is impracticable.

75. Plaintiffs' claims are typical of the claims of the Class and Subclasses because all members of the Class have sustained damages as a result of AT&T's charging of sales tax for internet access.

76. There are numerous questions of law and fact common to the Class and Subclasses that predominate over any questions affecting only individual class members, including but not limited to the following:

a. whether AT&T charged the Plaintiffs and the Class and Subclasses sales tax on internet access;

b. whether AT&T's collection of such taxes violated the Internet Tax Freedom Act;

c. whether AT&T remitted the collected taxes to various taxing authorities;

d. whether AT&T should be enjoined from collecting sales tax on internet access;

e. whether AT&T should be required to seek a refund of sales taxes paid to the state and local tax authorities and to return any tax refund to Plaintiffs and members of the Class and Subclasses .

77. All common questions are able to be resolved through the same factual occurrences as specifically and/or generally alleged herein.

78. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class and Subclasses they seek to represent. Plaintiffs have no claims antagonistic to those of the Class or Subclasses they seek to represent. Plaintiffs have retained competent and experienced counsel in complex class actions, mass tort and

products liability litigation. Counsel is committed to the vigorous prosecution of this action.

79. The prosecution of separate actions by Plaintiffs and individual members of the Class and Subclasses against AT&T would create a risk of inconsistent or varying adjudications on the common issues of law and fact related to this action.

80. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

81. The expense and burden of litigation would substantially impair the ability of the Class members to pursue individual cases to protect their rights. In the absence of a class action, AT&T will continue to collect sales tax improperly.

82. Class certification under Rule 23(b)(1) is appropriate because adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications.

83. Class certification under Rule 23(b)(2) is appropriate because AT&T has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole in that AT&T has refused to cease collecting sales tax for internet access.

84. Class certification under Rule 23(b)(3) is appropriate because the common issues of fact and law alleged herein are common to Plaintiffs and the Class and Subclasses and predominate over any questions affecting only individual members, thereby rendering the class action superior to all other available methods for the fair and efficient adjudication of this controversy.

**COUNT I**

**VIOLATION OF INTERNET TAX FREEDOM ACT**

85. Incorporating by reference paragraphs 57-84 above, Plaintiffs state in addition, that the Internet Tax Freedom Act, 47 U.S.C. § 151 (1998) (“ITFA”) as amended, bars state and local governments from imposing taxes on internet access. Section 1101(a) of the ITFA, in its current form, states:

“Moratorium. No State or political subdivision thereof shall impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2014:

(1) Taxes on Internet access.”

86. Under the ITFA, the phrase “internet access” means: “a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet; (B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold.-- (i) to provide such service; or (ii) to otherwise enable users to access content, information or other services offered over the Internet[.]”

87. Despite the prohibition on taxation of internet access under state and federal law, AT&T improperly and illegally charges its customers state and/or local sales tax on internet access on its monthly bills in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, New Jersey, New York,

North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming.

88. As a result of the violation of the ITFA, Plaintiffs and the Class and Subclasses were damaged in the amount of sales tax charged by AT&T for Internet access, together with interest on the money, which AT&T has wrongly charged Plaintiffs and the Class and Subclasses.

### **SUBCLASS CLASS ACTION ALLEGATIONS**

89. The state-specific Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 on behalf of a Class consisting of all consumers in their individual states who entered into a contract with AT&T for the provision of internet access through a smart phone or a wireless data card and who were charged tax on internet access in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming.

90. The state specific Plaintiffs are members of the subclass which they seek to represent.

91. The Consolidated Master Class Action Complaint seeks relief for the Subclasses described as follows:

All persons or entities who are residents of the named states who are or were customers of AT&T Mobility and who were charged Internet Taxes on bills

issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from each Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

92. Each Subclass consists of a minimum of hundreds of persons and therefore is so numerous that joinder is impracticable.

93. Plaintiffs' claims are typical of the claims of the Subclass because all members of the Subclass have sustained damages as a result of AT&T's charging of sales tax for internet access.

94. There are numerous questions of law and fact common to the Subclass that predominate over any questions affecting only individual class members, including but not limited to the following:

- a. whether AT&T charged the Plaintiffs and the members of each Subclass sales tax on internet access;
- b. whether AT&T's collection of such taxes violated state law.
- c. whether AT&T remitted the collected taxes to various state and local taxing authorities;
- d. whether AT&T reached its contract by collecting Internet Taxes;

- e. whether AT&T breached the covenant of good faith and fair dealing when it collected Internet Taxes;
- f. whether AT&T violated state-specific consumer protection laws by collecting internet taxes;
- g. whether AT&T was unjustly enriched by its collection of internet taxes;
- h. whether AT&T should be enjoined from collecting sales tax on internet access;
- i. whether AT&T should be required to seek a refund of sales taxes paid to the state and local tax authorities and to return any tax refund to Plaintiffs and members of the Class.

95. All common questions are able to be resolved through the same factual occurrences as specifically and/or generally alleged herein as to each Subclass.

96. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Subclass they seek to represent. Plaintiffs have no claims antagonistic to those of the Subclass they seek to represent. Plaintiffs have retained competent and experienced counsel in complex class actions, mass tort and products liability litigation. Counsel is committed to the vigorous prosecution of this action.

97. The prosecution of separate actions by Plaintiffs and individual members of the Subclass against AT&T would create a risk of inconsistent or varying adjudications on the common issues of law and fact related to this action.

98. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

99. The expense and burden of litigation would substantially impair the ability of the Subclass members to pursue individual cases to protect their rights. In the absence of a class action, AT&T will continue to collect sales tax improperly.

100. Class certification under Rule 23(b)(1) is appropriate because adjudications with respect to individual members of the Subclass would as a practical matter be dispositive of the interests of the other members not parties to the adjudications.

101. Class certification under Rule 23(b)(2) is appropriate because AT&T has acted or refused to act on grounds generally applicable to the Subclass, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Subclass as a whole in that AT&T has refused to cease collecting sales tax for internet access.

102. Class certification under Rule 23(b)(3) is appropriate because the common issues of fact and law alleged herein are common to Plaintiffs and each Subclass and predominate over any questions affecting only individual members, thereby rendering the class action superior to all other available methods for the fair and efficient adjudication of this controversy.

### **STATE-SPECIFIC COUNTS**

#### **ALABAMA**

103. The averments of paragraphs 57-102 are incorporated by reference.

104. Plaintiffs Stephanie Diethelm, Ann Marie Ruggerio, James Marc Ruggerio and Joseph Phillips bring this action on behalf of themselves and the Alabama Subclass.

105. The State of Alabama has “levied a tax on mobile radio communication services as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999...” Code of Alabama § 40-21-126. Under Code of Alabama § 40-21-121 (a), the tax rate is 6 percent. The provider is also entitled “to deduct and retain from the gross amount of tax billed

by the home service provider nine-tenths of one percent of the amount of such tax billed on or after February 1, 2002” and “one-fourth of one percent of the gross amount of such tax billed” after October 1, 2002. Code of Alabama § 40-21-121(a).

106. The definition of “mobile radio communication services” incorporated from federal regulations does not include internet access services. The referenced federal regulation defines “commercial mobile radio service” as a “mobile service that is: (1) “provided for profit, i.e., with the intent of receiving compensation or monetary gain,” (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public.” 47 C.F.R. § 20.3. An “interconnected service” is defined as a service “[t]hat is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network.” *Id.* “Public switched network” is defined as “[a]ny common carrier network...that use[s] the North American Numbering Plan in connection with the provision of switched services.” *Id.*

107. The North American Numbering Plan (NANP) is an integrated telephone numbering plan of 24 countries and territories: the United States and its territories, Canada, Bermuda, and 16 of the Caribbean countries. The NANP is a standardized system of numbering plan areas (NPA), which have evolved over time into a system of three-digit area codes and seven-digit telephone numbers. Through this plan, telephone calls can be directed to particular regions of the larger NANP public switched telephone network (PSTN), where they are further routed by the local networks.

108. Internet access does not fall within the definition of mobile radio communication services.

109. Under Alabama law, internet access charges are not included in the definition of mobile telecommunications services.

110. There is no Alabama law which permits AT & T Mobility to tax wireless internet access charges.

### **ALABAMA SUBCLASS**

111. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Alabama and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Alabama Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Alabama Subclass."

### **COUNT 2**

#### **BREACH OF CONTRACT**

112. The averments of paragraphs 57-102 are incorporated by reference.

113. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiffs and the Subclass purported sales “taxes” for internet access.

114. In so doing, AT&T breached its contract with Plaintiffs and the Subclass.

115. As a result of the breach of contract, Plaintiffs and the Subclass were damaged in the amount of the sales “taxes” charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiffs and the Subclass.

### **COUNT 3**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

116. The averments of paragraphs 57-102 are incorporated by reference.

117. AT&T’s breaches of the form Contracts with the Plaintiffs and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiffs and the Subclass, which is imputed into every contract in Alabama under the common law of Alabama and the Restatement (Second) of Contracts §205.

118. AT&T breached its duty of good faith and fair dealing to the Plaintiffs and the Subclass by unfairly charging the Plaintiffs and the Subclass sales “taxes” for internet access.

119. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiffs and the Subclass economic damages.

### **COUNT 4**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

120. The averments of paragraphs 57-102 are incorporated by reference.

121. On information and belief, AT&T retains a portion of the amounts collected as purported state and local sales “taxes” for wireless internet access. AT&T further retains at least

one-fourth of one-percent of the gross amount of such “taxes” billed as a service fee on the collection of such “taxes.”

122. AT&T collects this amount to the detriment of Plaintiffs and members of the Subclass.

123. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

124. As a result AT&T is unjustly enriched at the expense of Plaintiffs and the Subclass.

125. Accordingly, Plaintiffs and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

## **COUNT 5**

### **INJUNCTIVE RELIEF**

126. The averments of paragraphs 57-102 are incorporated by reference.

127. AT&T’s continued charging of Plaintiffs and the Subclass sales “taxes” on the sale of wireless internet access results in a continuing harm to Plaintiffs and the Subclass in that Plaintiffs and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

128. Unless enjoined from doing so, AT&T will continue to collect from Plaintiffs and the Subclass sales “taxes” on the sale of internet access.

129. Plaintiffs and the Subclass have no adequate remedy at law in that damages can only address “taxes” that AT&T has already collected on the sale of wireless internet access but cannot address AT&T’s ongoing collection of such “taxes” in violation of the law.

130. Plaintiffs and the Subclass have no adequate remedy at law to stop the collection of such “taxes.”

131. Plaintiffs and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying purported “taxes” on the sale of internet access services absent this Court’s order enjoining AT&T from the collection of such illegal “taxes.”

WHEREFORE, on behalf of themselves and the Subclass, Plaintiffs seek the following relief:

A. Damages in the amount of “taxes” improperly charged by AT&T on sales of wireless internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Disgorgement of all funds collected by AT&T as state and local sales “taxes” on wireless internet access not remitted to the State of Alabama or any local taxing authority and return of such funds to the Plaintiffs and members of the Subclass.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of wireless internet access.

D. Attorneys’ fees as permitted by common law, statute, or equity.

E. Prejudgment interest in the statutory amount.

F. All costs of this action recovery for which is permitted by law.

G. Such other and further relief as the Court deems proper.

**ALASKA**

132. The averments of paragraphs 57-102 are incorporated by reference.

133. Plaintiff Rick Manrique brings this action on behalf of himself and the Alaska Subclass.

134. Cities in Alaska are permitted to levy a sales tax pursuant to § 29.35.10 Rev. Stat. Alaska. Alaska law does not permit these cities to levy a tax in violation of the ITFA.

135. The following cities have levied taxes on internet access in violation of the ITFA: Adak, Alakanuk, Aleknagik, Ambler, Angoon, Aniak, Bethel, Brevig Mission, Buckland, Chefornak, Chevak, Clarks Point, Cordova, Craig, Deering, Dillingham, Diomedede, Eek, Elim, Emmonak, False Pass, Fort Yukon, Galena, Gambell, Gustavus, Haines, Hoonah, Hooper Bay, Houston, Hydaburg, Juneau City, Juneau Borough, Kake, Kenai Peninsula Borough, Ketchikan Borough, Kiana, King Cove, Kivalina, Klawock, Kodiak, Kotlik, Kotzebue, Koyuk, Kwethluk, Larson Bay, Manokotak, Marshall, Mekoryuk, Mountain Village, Napakiak, Nenana, Nightmute, Nome, Nondalton, Noorvik, North Pole, Nunam Iqua, Nunapitchuk, Old Harbor, Ouzinkie, Palmer, Pelican, Petersburg, Pilot Station, Point Hope, Port Alexander, Quinhagak, Saint Marys, Saint Michael, Saint Paul Island, Sand Point, Savoonga, Scammon Bay, Selawik, Shaktoolik, Shishmaref, Shungnak, Sitka City/Borough, Skagway, Stebbins, Tanana, Teller, Tenakee, Springs, Thorne Bay, Togiak, Toksook Bay, Unalakleet, Unalaska, Wales, Wasilla, White Mountain, Wrangell, Yakutat Borough.

#### **ALASKA SUBCLASS**

136. The Consolidated Master Class Action Complaint seeks relief for subclasses of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Alaska and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Alaska Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Alaska Subclass."

#### **COUNT 6**

#### **BREACH OF CONTRACT**

137. The averments of paragraphs 57-102 are incorporated by reference.

138. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

139. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

140. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

#### **COUNT 7**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

141. The averments of paragraphs 57-102 are incorporated by reference.

142. AT&T breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Alaska under case law so as to effectuate the reasonable intentions of the parties, and is supported by the Restatement (Second) of Contracts §205.

143. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by: unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

144. The breach was an objective breach of the covenant of good faith and fair dealing in that in charging taxes that it was prohibited from charging under federal law, AT&T acted in a manner that a reasonable person would believe was unfair.

145. The breach was also subjective because by charging for taxes prohibited by federal law, AT&T was acting in a manner that deprived Plaintiff of the benefit of the contract.

146. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 8**

#### **UNJUST ENRICHMENT**

147. The averments of paragraphs 57-102 are incorporated by reference.

148. Under Alaska law, AT&T may retain a percentage of the state sales tax it collects for itself. On information and belief, AT&T retains the permitted amount of the state sales tax it collects and thus obtains a legal benefit.

149. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass and thus appreciates the benefit.

150. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

151. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass.

152. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 9**

**VIOLATION OF 45.50.471 ALASKA STATUTES**

153. The averments of paragraphs 57-102 are incorporated by reference.

154. Alaska Consumer Protection Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

155. A sale of services enabling Internet access constitutes “merchandise” within the meaning of Title 45, Chapter 50 of the Alaska Statutes.

156. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of § Title 45, Chapter 50.

157. The aforementioned violations of the § 45.50.471 AS, have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

158. Plaintiff has been forced to hire attorneys to enforce her rights under the Alaska Consumer Protection Act.

**COUNT 10**

**VIOLATION OF (STATE CONSUMER PROTECTION ACT)**

**INJUNCTIVE RELIEF**

159. The averments of paragraphs 57-102 are incorporated by reference.

160. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

161. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of § 45.50.471 AS, as pleaded above.

162. Section 45.50.535 AS permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

WHEREFORE, Plaintiff and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

## **ARIZONA**

163. The averments of paragraphs 57-102 are incorporated by reference.

164. Plaintiff Kirk Tushaus brings this action on behalf of himself and the Arizona Subclass.

165. Arizona Revised Statutes (hereafter “ARS”) §42-5001 et seq. imposes a transaction privilege tax (euphemistically known as a “sales tax”) on “telecommunications services,” as levied, defined, and classified at ARS § 42-5008 and ARS § 42-5010 (A) (1) (c).

166. ARS § 42-5064 (A) (2) prohibits the imposition of the tax upon “sales of internet access or application services” to “subscribers and customers.” ARS § 42-6004 (A) (9) also prohibits the imposition of municipal taxes upon such sales of internet access or application services.

## **ARIZONA SUBCLASS**

167. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Arizona and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Arizona Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors,

successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Arizona Subclass."

**COUNT 11**

**BREACH OF CONTRACT**

168. The averments of paragraphs 57-102 are incorporated by reference.

169. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass state tax for internet access.

170. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

171. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 12**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

172. The averments of paragraphs 57-102 are incorporated by reference.

173. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every contract in Arizona under the common law of Arizona and the Restatement (Second) of Contracts §205.

174. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

175. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 13**

**VIOLATION OF ARIZONA CONSUMER PROTECTION ACT**

176. The averments of paragraphs 57-102 are incorporated by reference.

177. The Arizona Consumer Protection Act, ARS § 44-1521 et seq., was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

178. A sale of services enabling Internet access constitutes “merchandise” within the meaning of ARS § 44-1521 (5).

179. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of ARS § 44-1522 (A).

180. The aforementioned violations of the Arizona Consumer Protection Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

181. Plaintiff and the Subclass have been forced to hire attorneys to enforce their rights under the Arizona Consumer Protection Act.

**COUNT 14**

**VIOLATION OF ARIZONA CONSUMER PROTECTION ACT**

**INJUNCTIVE RELIEF**

182. The averments of paragraphs 57-102 are incorporated by reference.

183. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

184. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of ARS § 44-1522 (A) as pleaded in Count III above.

185. Arizona law permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local taxes on the sales of internet access.

### **COUNT 15**

#### **UNJUST ENRICHMENT**

186. The averments of paragraphs 57-102 are incorporated by reference.

187. Under ARS § 42-5017, AT&T may obtain a limited tax credit for accounting and reporting the taxes it collects. Moreover, AT&T may have passed on charges it has incurred in collecting, accounting for, and reporting the taxes it has wrongfully collected directly or indirectly to its customers such as Plaintiff and the Subclass.

188. On information and belief, AT&T retains such amounts for its own use.

189. AT&T collects these amounts to the detriment of Plaintiff and members of the Subclass.

190. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

191. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

192. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 16**

**INJUNCTIVE RELIEF**

193. The averments of paragraphs 57-102 are incorporated by reference.

194. AT&T's continued charging of Plaintiff and the Subclass of state and local taxes on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

195. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

196. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local taxes that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

197. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

198. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of himself and the Subclass seeks the following relief:

A. Damages in the amount of state and local taxes improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local taxes improperly charged by AT&T on sales of internet access in violation of the Arizona Consumer Protection Act.

C. Disgorgement of all funds collected by AT&T as state and local taxes on internet access not remitted to the state of Arizona or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local taxes on sales of internet access.

E. Attorneys fees as permitted by either the common law, ARS §12-341.01, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **ARKANSAS**

199. The averments of paragraphs 57-102 are incorporated by reference.

200. Plaintiff Dorothy Taylor brings this action on behalf of herself and the Arkansas Subclass.

201. Arkansas law imposes a sales tax on “telecommunication services.”

202. Ark. Code Ann. §26-52-315(e)(19)(C), defines “telecommunications services” to exclude charges for internet access from sales tax. “Telecommunications service does not include: ... (vi) internet access service.”

### **ARKANSAS SUBCLASS**

203. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Arkansas and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Arkansas Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Arkansas Subclass."

### **COUNT 17**

#### **BREACH OF CONTRACT**

204. The averments of paragraphs 57-102 are incorporated by reference.

205. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

206. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

207. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 18**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

208. The averments of paragraphs 57-102 are incorporated by reference.

209. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitutes a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Arkansas under the common law of Arkansas and the Restatement (Second) of Contracts §205.

210. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

211. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 19**

**VIOLATION OF ARKANSAS DECEPTIVE TRADE PRACTICES ACT**

**ARK. CODE. ANN. § 4-88-101, ET SEQ.**

212. The averments of paragraphs 57-102 are incorporated by reference.

213. The Arkansas Deceptive Trade Practices Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

214. A sale of services enabling Internet access constitutes “merchandise” within the meaning of Ark. Code Ann. § 4-88-101, *et seq.*

215. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T engaged in unconscionable, false, and deceptive practices and acts in violation of Ark. Code Ann. § 4-88-107.

216. The aforementioned violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101, *et seq.*, have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

217. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Arkansas Deceptive Trade Practices Act.

## **COUNT 20**

### **UNJUST ENRICHMENT UNDER STATE LAW**

218. The averments of paragraphs 57-102 are incorporated by reference.

219. Under Arkansas law, AT&T may retain 2% of the state sales tax it collects for itself.

220. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

221. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

222. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

223. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

224. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 21**

**INJUNCTIVE RELIEF**

225. The averments of paragraphs 57-102 are incorporated by reference.

226. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

227. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

228. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

229. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

230. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Arkansas Deceptive Trade Practices Act.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Arkansas or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

#### **CALIFORNIA – CENTRAL DISTRICT**

231. The averments of paragraphs 57-102 are incorporated by reference.

232. Plaintiffs John Simon, Karl Simonsen and Christopher Jacobs bring this action on behalf of themselves and the California – Central District Subclass.

#### **CALIFORNIA – CENTRAL DISTRICT SUBCLASS**

233. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in the California Central District and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the California Central District Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The California – Central District Subclass."

## **COUNT 22**

### **BREACH OF CONTRACT**

234. The averments of paragraphs 57-102 are incorporated by reference.

235. Despite the prohibition on state and local fees and taxes imposed by the Internet Tax Freedom Act, AT&T charged plaintiffs and the Subclass fees and/or taxes based upon the cost of their internet access.

236. In doing the acts complained of herein, AT&T breached its contractual obligations to plaintiffs and the putative Subclass causing them damages in an amount to be proven at the time of trial.

**COUNT 23**

**VIOLATION OF BUSINESS AND PROFESSIONS CODE, §17200 ET SEQ.**

237. The averments of paragraphs 57-102 are incorporated by reference.

238. By collecting charges that are unlawful, deceptive and/or unfair, as alleged herein, AT&T violated Business and Professions Code § 17200, *et seq.* causing actual injury to plaintiffs and each member of the Subclass.

**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFFS and the Subclass pray for judgment against Defendant as follows:

**ON THE FIRST CAUSE OF ACTION**

1. For money damages;
2. For attorney fees;
3. For prejudgment interest as allowed by law;
4. For costs of suit incurred herein; and
5. For such other relief as the Court deems just and proper.

**ON THE SECOND CAUSE OF ACTION**

1. For disgorgement by Defendant of all amounts that have been obtained in connection with any of the deceptive, unfair and/or unlawful business practices alleged herein;
2. For restitution according to proof;
3. For attorney fees;
4. For prejudgment interest as allowed by law;
5. For costs of suit incurred herein; and
6. For such other relief as the Court deems just and proper.

**CALIFORNIA – SAN DIEGO**

239. The averments of paragraphs 57-102 are incorporated by reference.

240. Plaintiff Donald Sipple brings this action on behalf of himself and the California – San Diego Subclass.

**CALIFORNIA- SAN DIEGO SUBCLASS**

241. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in California – San Diego and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the California Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The California – San Diego Subclass.”

**COUNT 24**

**BREACH OF CONTRACT**

242. The averments of paragraphs 57-102 are incorporated by reference.

243. Despite the prohibition on state and local fees and taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass fees and/or taxes based upon the cost of his internet access.

244. In doing the acts complained of herein, AT&T breached its contractual obligations to Plaintiff and the putative Subclass causing him damages in an amount to be proven at the time of trial.

### **COUNT 25**

#### **VIOLATION OF BUSINESS AND PROFESSIONS CODE, §17200 ET SEQ.**

245. The averments of paragraphs 57-102 are incorporated by reference.

246. In failing to inform the Plaintiffs and the Subclass that it intended to charge them fees and taxes that were not due, and in collecting charges that are unlawful, deceptive and/or unfair, AT&T violated Business and Professions Code § 17200.

247. Specifically, in doing the acts complained of herein, AT&T engaged in conduct in contravention of California Law.

### **PRAYER**

WHEREFORE, Plaintiff and the Subclass pray for relief as follows:

#### **ON THE FIRST CAUSE OF ACTION**

1. For money damages;
2. For attorney and paralegal fees;
3. For prejudgment interest as allowed by law;
4. For costs of suit incurred herein; and
5. For such other relief as the Court deems just and proper.

#### **ON THE SECOND CAUSE OF ACTION**

1. For disgorgement by Defendant of all amounts that have been obtained in connection with any of the deceptive, unfair and/or unlawful business practices alleged herein;
2. For restitution according to proof;
3. For attorney and paralegal fees;
4. For prejudgment interest as allowed by law;
5. For costs of suit incurred herein; and
6. For such other relief as the Court deems just and proper.

### **COLORADO**

248. The averments of paragraphs 57-102 are incorporated by reference.

249. Plaintiff William A. Wieland brings this action on behalf of himself and the Colorado Subclass.

250. C.R.S. 39-26-104 (1)(c)(I), imposes a sales tax on “telecommunications service”:  
*“Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. On or after August 1, 2002, mobile telecommunications service shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use is within Colorado and the service originates and terminates within the same state. In accordance with the “Mobile Telecommunications Sourcing Act”, 4 U.S.C. secs. 116 to 124, as amended, on or after August 1, 2002, mobile telecommunications service provided to a customer whose place of primary use is outside the borders of the state of Colorado is exempt for the tax imposed by this sections.”*

251. C.R.S. 39-26-706 (2)(a), defines “internet access services” to exclude charges for internet access from sales tax.

*“On and after May 1, 1998, internet access services, as defined in section 24-79-102(2)(b), C.R.S., shall be exempt from taxation under the provisions of part 1 of this article.”*

### **COLORADO SUBCLASS**

252. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Colorado and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Colorado Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Colorado Subclass.”

### **COUNT 26**

### **BREACH OF CONTRACT**

253. The averments of paragraphs 57-102 are incorporated by reference.

254. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

255. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

256. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 27**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

257. The averments of paragraphs 57-102 are incorporated by reference.

258. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Colorado under the common law of Colorado and the Restatement (Second) of Contracts §205.

259. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

260. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 28**

#### **VIOLATION OF COLORADO CONSUMER PROTECTION ACT**

261. The averments of paragraphs 57-102 are incorporated by reference.

262. The Colorado Consumer Protection Act (C.R.S. 6-1-101 et seq.) was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

263. A sale of services enabling Internet access when associated with the charging and collection of taxes that are not recoverable by law, constitutes a deceptive trade practice meaning of C.R.S. 6-1-105.

264. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due, and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of services in violation of C.R.S. § 6-1-105.

265. The aforementioned violations of the Colorado Consumer Protection Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

266. Plaintiff and the Subclass have been forced to hire attorneys to enforce his rights under the Colorado Consumer Protection Act.

**COUNT 29**

**VIOLATION OF COLORADO CONSUMER PROTECTION ACT**

**INJUNCTIVE RELIEF**

267. The averments of paragraphs 57-102 are incorporated by reference.

268. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

269. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of the Colorado Consumer Protection Act.

270. C.R.C.P. 65 and F.R.C.P. 65 permit the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**COUNT 30**

**INJUNCTIVE RELIEF**

271. The averments of paragraphs 57-102 are incorporated by reference.

272. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

273. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

274. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

275. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

276. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Colorado or any local taxing authority and the return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. All remedies as set forth in C.R.S. 6-1-112 (1)(2)(3).

F. Attorneys fees as permitted by the common law, the Colorado Consumer Protection Act, or equity.

G. Prejudgment interest in the statutory amount.

H. All costs of this action recovery for which is permitted by law.

I. Such other and further relief as the Court deems proper.

## **CONNECTICUT**

277. The averments of paragraphs 57-102 are incorporated by reference.

278. Plaintiff David Rock brings this action on behalf of himself and the Connecticut Subclass.

279. Connecticut General Statutes § 12-407, *et seq.* imposes a sales tax on “telecommunications service.” Connecticut General Statutes Section § 12-408 provides that “[f]or the privilege of making any sales, [of telecommunications service] at retail, in this state for

a consideration, a tax is hereby imposed on all retailers at the rate of five and one-half percent of the gross receipts of any retailer . . .”

Connecticut General Statutes § 12-407(a)(26)(A), defines “telecommunications services” to exclude charges for internet access from sales tax. That Section provides that “[t]elecommunications service” does not include . . . (x) Internet access service.”

### **CONNECTICUT SUBCLASS**

280. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Connecticut and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Connecticut Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Connecticut Subclass.”

### **COUNT 31**

#### **BREACH OF CONTRACT**

281. The averments of paragraphs 57-102 are incorporated by reference.

282. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

283. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

284. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 32**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

285. The averments of paragraphs 57-102 are incorporated by reference.

286. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Connecticut under the common law of Connecticut and the Restatement (Second) of Contracts §205.

287. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

288. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 33**

#### **VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT**

289. The averments of paragraphs 57-102 are incorporated by reference.

290. The Connecticut Unfair Trade Practices Act (“CUTPA”) was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of CUTPA.

291. The conduct of defendant described herein: 1) offends public policy; 2) is immoral, unethical, oppressive or unscrupulous; 3) causes substantial injury to consumers.

292. The aforementioned violations of CUTPA have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

#### **COUNT 34**

#### **VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT**

#### **INJUNCTIVE RELIEF**

293. The averments of paragraphs 57-102 are incorporated by reference.

294. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

295. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of CUTPA as pleaded in Count III.

296. CUTPA permits the Court to enter injunctive relief to stop AT&T’s violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**COUNT 35**

**INJUNCTIVE RELIEF**

297. The averments of paragraphs 57-102 are incorporated by reference.

298. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

299. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

300. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

301. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

302. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of CUTPA.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Connecticut or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, CUTPA or in equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

#### **DISTRICT OF COLUMBIA**

303. The averments of paragraphs 57-102 are incorporated by reference.

304. Plaintiff Andy Armstrong brings this action on behalf of himself and the District of Columbia Subclass. The District of Columbia imposes a 10% tax on all wireless telecommunication companies who sell wireless telecommunication services to District of Columbia residents. D.C. Stat. Ann. Section 47-3902(b).

#### **WASHINGTON, D.C. SUBCLASS**

305. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in District of Columbia and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the District of Columbia Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The District of Columbia Subclass."

### **COUNT 36**

#### **BREACH OF CONTRACT**

306. The averments of paragraphs 57-102 are incorporated by reference.

307. Despite the prohibition by the Internet Tax Freedom Act on the imposition of state and local taxes on internet access, AT&T charged Plaintiff and the Subclass local surcharges on internet access.

308. In so doing, AT&T breached its contract with Plaintiff (and its contracts with the Subclass).

309. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of local surcharges collected by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 37**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

310. The averments of paragraphs 57-102 are incorporated by reference.

311. AT&T entered into a written contract with Plaintiff and members of the Subclass. The common law of District of Columbia implies a covenant of good faith and fair dealing into this contract.

312. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by charging the Plaintiff and the Subclass, unfairly and in violation of the Internet Tax Freedom Act, local surcharges on internet access.

313. The abovementioned breaches of contract and of the covenant of good faith and fair dealing have caused damages to the Plaintiff and to the Subclass.

### **COUNT 38**

#### **INJUNCTIVE RELIEF**

314. The averments of paragraphs 57-102 are incorporated by reference.

315. AT&T's continued charging of Plaintiff and the Subclass of local surcharges on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect.

316. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass local surcharges on the sale of internet access.

317. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address local surcharges that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such local surcharges in violation of the law.

318. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

319. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying local surcharges on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**COUNT 39**

**VIOLATION OF DISTRICT OF COLUMBIA CONSUMER PROTECTION**

**PROCEDURES ACT**

320. The averments of paragraphs 57-102 are incorporated by reference.

321. The District of Columbia Consumer Protection Procedures Act ("CPPA") was enacted to protect District of Columbia consumers from "unlawful consumer practices" and provides a private right of action for consumers like Plaintiff. D.C. Official Code §38-3901 et seq. D.C. Official Code §38-3905(k)(1) provides a private right of action and treble damages or \$1,500, whichever is greater.

322. AT&T is a "merchant" as that term is defined in D.C. Official Code §38-3901(a)(3) and is therefore subject to the provisions of the CPPA.

323. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of services in violation of D.C. Official Code §38-3904.

324. The aforementioned violations of the CPPA have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

325. Plaintiff and the Subclass have been forced to hire attorneys to enforce his rights under the CPPA and seeks all damages available under the CPPA, including attorney fees.

WHEREFORE, Plaintiff, on behalf of himself and the Subclass, requests a trial by jury and seeks the following relief:

A. Damages in the amount of local surcharges improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. An order of this Court enjoining the collection by AT&T of local surcharges on sales of internet access.

C. Attorneys fees as permitted by law.

D. Prejudgment interest in the statutory amount.

E. All costs of this action recovery for which is permitted by law.

F. Such other and further relief as the Court deems proper.

**FLORIDA**

326. The averments of paragraphs 57-102 are incorporated by reference.

327. Plaintiff Adrienne D. Munson brings this action on behalf of herself and the Subclass.

328. Section 202.12, Florida Statutes, imposes a sales tax of 6.8 percent on “communications services.” §202.12(1)(a). That section further provides that “[t]he gross receipts tax imposed by chapter 203 shall be collected on the same taxable [communications] transactions and remitted with the” communications sales tax. §202.12(1)(c). The gross receipts tax rate applied to communications services in Florida is 2.37 percent. §203.01(1)(b), Fla. Stat. Thus, a combined tax of 9.17 percent is generally levied on communication services in Florida on behalf of the State.

329. Additionally, local governments within Florida have the discretion to levy a Local Communications Services Tax, which is set by ordinance and varies by county and municipality. §202.19(1)-(2), Fla. Stat. Currently, the Local Communications Services Tax Rate ranges from .40 percent in Marineland, St. Johns County, to 7.40 percent in unincorporated Alachua County. See State of Florida Department of Revenue Communications Services Tax Rate Table available at <https://geotax.state.fl.us/help/helpJurRate.xls>. The Local Communication Services Tax Rate for Wellington, Plaintiff's city of residence, is 5.52%. *Id.*

330. Section 202.11(2)(h), Florida Statutes, defines "communications services" to exclude "Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services."

#### **FLORIDA SUBCLASS**

331. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Florida and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Florida Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors,

successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Florida Subclass."

**COUNT 40**

**BREACH OF CONTRACT**

332. The averments of paragraphs 57-102 are incorporated by reference.

333. Despite the Internet Tax Freedom Act's prohibition on state and local governments imposing taxes on internet access, and Florida's law prohibiting the same, AT&T charged Plaintiff and the Subclass purported "taxes" for wireless internet access.

334. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

335. Is a direct and proximate result of AT&T's breach of contract, Plaintiff and the Subclass were damaged in the amount of purported "taxes" charged by AT&T for internet access, together with interest on the money that AT&T has wrongly charged Plaintiff and the Subclass.

336. As a direct and proximate result of AT&T's breach of contract, Plaintiff and the Subclass were obligated to retain attorneys to represent her interests in this matter.

337. Any and all conditions precedent to bringing this action have been met or waived.

**COUNT 41**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

338. The averments of paragraphs 57-102 are incorporated by reference.

339. AT&T owed Plaintiff and the Subclass a duty to perform its obligations under the terms of its form Contracts in good faith.

340. AT&T's breaches of the form Contracts with Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every contract in Florida under the common law of Florida and the Restatement (Second) of Contracts §205.

341. AT&T breached its duty of good faith and fair dealing to Plaintiff and the Subclass by unfairly charging Plaintiff and the Subclass purported "taxes" for internet access.

342. As a direct and proximate cause of AT&T's breach of its good faith obligations, Plaintiff and the Subclass were damaged in the amount of purported "taxes" charged by AT&T for internet access, together with interest on the money that AT&T has wrongly charged Plaintiff and the Subclass.

343. As a direct and proximate result of AT&T's breach of its good faith obligations, Plaintiff was obligated to retain attorneys to represent her interests in this matter.

344. Any and all conditions precedent to bringing this action have been met or waived.

#### **COUNT 42**

#### **VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

345. The averments of paragraphs 57-102 are incorporated by reference.

346. In failing to inform Plaintiff and the Subclass that it intended to charge purported "taxes" that were not due and in collecting purported "taxes" that were not due to any government entity, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in violation of Florida's Deceptive and Unfair Trade Practices Act.

347. The purpose of Florida's Deceptive and Unfair Trade Practices Act is to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the course of any trade or commerce.

348. Florida's Deceptive and Unfair Trade Practices Act is designed to protect not only the rights of litigants, but also the rights of the consuming public at large. When addressing a deceptive or unfair trade practice claim, the issue is not whether the plaintiff actually relied on the alleged practice, but whether the practice was likely to deceive a consumer acting reasonably in the same circumstances.

349. The charging of purported state and local sales "taxes" on the sale of wireless internet access when no such tax is due or permitted is a violation of Florida's Deceptive and Unfair Trade Practices Act.

350. As a direct and proximate cause of AT&T's violation of Florida's Deceptive and Unfair Trade Practices Act, Plaintiff and the Subclass were damaged in the amount of purported "taxes" charged by AT&T for internet access, together with interest on the money that AT&T has wrongly charged Plaintiff and the Subclass.

351. As a direct and proximate result of AT&T's violation of Florida's Deceptive and Unfair Trade Practices Act, Plaintiff and the Subclass were obligated to retain attorneys to represent her interests in this matter.

352. Any and all conditions precedent to bringing this action have been met or waived.

353. AT&T continues to charge Plaintiff and the Subclass purported “taxes” on internet access. Florida law permits the Court to enter injunctive relief to stop AT&T’s violations of law by continuing to charge purported “taxes” for internet access.

**COUNT 43**

**UNJUST ENRICHMENT UNDER STATE LAW**

354. The averments of paragraphs 57-102 are incorporated by reference.

355. Under Florida law, AT&T may retain .75 % of the purported “state taxes” it collects for itself. Under section 202.28, Florida Statutes, “for the purpose of compensating persons providing communications services for the keeping of prescribed records, the filing of timely tax returns, and the proper accounting and remitting of taxes, persons collecting taxes imposed under this chapter ...shall be allowed to deduct 0.75 percent of the amount of the tax due and accounted for and remitted to the department.”

356. On information and belief, AT&T retains all or a portion of the amounts it collects as purported “taxes” for internet access.

357. AT&T collects and keeps these amounts to the detriment of Plaintiff and members of the Subclass.

358. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

359. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

360. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

361. As a direct and proximate result of AT&T's unjust enrichment, Plaintiff and the Subclass were obligated to retain attorneys to represent her interests in this matter.

362. Any and all conditions precedent to bringing this action have been met or waived.

**COUNT 44**

**INJUNCTIVE RELIEF**

363. The averments of paragraphs 57-102 are incorporated by reference.

364. AT&T's continued charging of Plaintiff and the Subclass purported state and local "taxes" on internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

365. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass purported state and local "taxes" on internet access.

366. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address purported state and local "taxes" that AT&T has already collected on internet access but cannot address AT&T's ongoing collection of such purported "taxes" in violation of the law.

367. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such purported "taxes."

368. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying purported state and local "taxes" on internet access absent this Court's order enjoining AT&T from the collection of such "taxes."

WHEREFORE, Plaintiff on behalf of herself and the Subclass seek the following relief:

A. Damages in the amount of purported state and local “taxes” illegally charged by AT&T for internet access services caused by AT&T’s breach of contract and/or breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of purported state and local “taxes” improperly charged by AT&T for internet access services in violation of Florida law.

C. Disgorgement of all funds collected by AT&T as purported state and local “taxes” for internet access not remitted to the State of Florida or any local taxing authority and return of such funds to Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of purported state and local “taxes” for internet access.

E. Attorneys’ fees as permitted by common law, statute, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action, recovery for which is permitted by law.

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

## **GEORGIA**

369. The averments of paragraphs 57-102 are incorporated by reference.

370. Plaintiff Robert Wilhite brings this action on behalf of himself and the Georgia Subclass.

371. Under Georgia law, internet access charges are not included in the definition of mobile telecommunications services. Under O.C.G.A. Section 48-8-13, “mobile telecommunications service” means commercial mobile radio service, as such term is defined in *47 C.F.R. Section 20.3* as in effect on June 1, 1999, or as subsequently amended.”

372. The definition of “mobile radio communication services” incorporated from federal regulations does not include internet access services. The referenced federal regulation defines “commercial mobile radio service” as a “mobile service that is: (1) “provided for profit, i.e., with the intent of receiving compensation or monetary gain,” (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public.” 47 C.F.R. § 20.3. An “interconnected service” is defined as a service “[t]hat is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network.” *Id.* “Public switched network” is defined as “[a]ny common carrier network...that use[s] the North American Numbering Plan in connection with the provision of switched services.” *Id.*

373. The North American Numbering Plan (NANP) is an integrated telephone numbering plan of 24 countries and territories: the United States and its territories, Canada, Bermuda, and 16 of the Caribbean countries. The NANP is a standardized system of numbering plan areas (NPA), which have evolved over time into a system of three-digit area codes and seven-digit telephone numbers. Through this plan, telephone calls can be directed to particular regions of the larger NANP public switched telephone network (PSTN), where they are further routed by the local networks.

374. Internet access does not fall within the definition of mobile radio communication services.

375. Under Georgia law and federal law, internet access charges are not included in the definition of mobile telecommunications services.

376. There is no Georgia state or local law which permits AT & T Mobility to tax internet access charges.

### **GEORGIA SUBCLASS**

377. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Georgia and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Georgia Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Georgia Subclass."

### **COUNT 45**

#### **BREACH OF CONTRACT**

378. The averments of paragraphs 57-102 are incorporated by reference.

379. Despite the prohibition against local taxes established by the Internet Tax Freedom Act, AT&T charged Plaintiff purported local sales "taxes" for internet access.

380. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

381. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of the purported local sales “taxes” charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 46**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

382. The averments of paragraphs 57-102 are incorporated by reference.

383. AT&T’s breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute breaches of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every contract in Georgia under the common law of Georgia and the Restatement (Second) of Contracts §205.

384. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass purported local sales “taxes” for internet access.

385. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 47**

**VIOLATION OF GEORGIA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

386. The averments of paragraphs 57-102 are incorporated by reference.

387. Georgia’s Uniform Deceptive Trade Practices Act (“UDTPA”), O.C.G.A. § 10-1-372(a)(12) broadly prohibits “any . . . conduct which similarly creates a likelihood of confusion or of misunderstanding.” To prevail in an action under this part, a complainant “need not prove competition between the parties or actual confusion or misunderstanding.” O.C.G.A. § 10-1-372(b) (emphasis added).

388. The Georgia UDTPA authorizes injunctive relief. Injunctive relief under the Georgia Uniform Deceptive Trade Practices Act is available to enjoin any practice that has the potential or likelihood to deceive or confuse in the future, regardless of whether or not such deception or confusion has actually already occurred.

389. In failing to inform Plaintiff and the Subclass that it intended to charge them “taxes” for internet access that were not due and in collecting purported “taxes” that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of the Georgia Uniform Deceptive Trade Practices Act.

390. The aforementioned violations of the Georgia Uniform Deceptive Trade Practices Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and ongoing damages which warrant injunctive relief and attorneys’ fees.

391. AT&T continues to charge Plaintiff and the Subclass purported sales “taxes” on the sale of wireless internet access.

392. The charging of purported “taxes” on the sale of wireless internet access when no such “tax” is due is a violation of the Georgia Uniform Deceptive Trade Practices Act.

393. Georgia law permits the Court to enter injunctive relief to stop AT&T’s violations of the law by continuing to charge purported sales “taxes” on the sales of wireless internet access.

#### **COUNT 48**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

394. The averments of paragraphs 57-102 are incorporated by reference.

395. On information and belief, AT&T retains part of the amounts collected as purported local sales “taxes” from consumers in Georgia for wireless internet access.

396. AT&T collects these amounts to the detriment of Plaintiff and members of the Subclass.

397. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

398. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

399. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful conduct alleged herein.

#### **COUNT 49**

#### **INJUNCTIVE RELIEF**

400. The averments of paragraphs 57-102 are incorporated by reference.

401. AT&T’s continued charging of Plaintiff and the Subclass of purported local sales “taxes” on the sale of wireless internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

402. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass purported sales “taxes” on the sale of internet access.

403. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address purported “taxes” that AT&T has already collected on the sale of wireless internet access but cannot address AT&T’s ongoing collection of such taxes in violation of the law.

404. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

405. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying purported “taxes” on the sale of internet access absent this Court’s order enjoining AT&T from the collection of such “taxes.”

WHEREFORE, Plaintiff on behalf of himself and the Subclass seek the following relief:

A. Damages in the amount of purported “taxes” improperly charged by AT&T on sales of wireless internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of purported sales “taxes” improperly charged by AT&T on sales of wireless internet access in violation of federal law and Georgia law.

C. Disgorgement of all funds collected by AT&T as purported local sales “taxes” on wireless internet access not remitted to any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of local sales tax on sales of wireless internet access.

E. Attorneys’ fees as permitted by common law, statute, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

## **HAWAII**

406. The averments of paragraphs 57-102 are incorporated by reference.

407. Plaintiff David Guerrero brings this action on behalf of himself and the Hawaii Subclass.

408. Hawaii imposes a state and local Hawaii has a public service company tax pursuant to § 239-2 et seq. (Rev. Stat. Hawaii). These statutes permit the taxation of intrastate telecommunications only.

409. Internet access service is not intrastate telecommunications.

### **HAWAII SUBCLASS**

410. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Hawaii and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Hawaii Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Hawaii Subclass."

**COUNT 50**

**BREACH OF CONTRACT**

411. The averments of paragraphs 57-102 are incorporated by reference.

412. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

413. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

414. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

**COUNT 51**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

415. The averments of paragraphs 57-102 are incorporated by reference.

416. AT&T's breaches of the form Contracts with Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to Plaintiff and the Subclass, which is imputed into every Contract in Hawaii under case law so as to effectuate the reasonable intentions of the parties, and is supported by the Restatement (Second) of Contracts §205.

417. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by: unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

418. In charging the taxes prohibited by law AT&T acted in a manner inconsistent with the justified expectations of Plaintiff and the Subclass.

419. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused Plaintiff and the Subclass economic damages.

**COUNT 52**

**UNJUST ENRICHMENT**

420. The averments of paragraphs 57-102 are incorporated by reference.

421. Under Hawaii law, AT&T may retain a percentage of the state sales tax it collects for itself.

423. On information and belief, AT&T retains the permitted amount of the state sales tax it collects and thus obtains a legal benefit.

424. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass and thus appreciates the benefit.

425. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

426. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass.

427. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 53**

**VIOLATION OF HRS § 480-2 HAWAII STATUTES**

428. The averments of paragraphs 57-102 are incorporated by reference.

429. The Hawaii Deceptive Practices Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

430. A sale of services enabling Internet access constitutes “merchandise” within the meaning of HRS § 480-2 of the Hawaii Statutes.

431. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of § 480-2, HRS.

432. The aforementioned violations of the HRS § 480-2 have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

433. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Deceptive Practices Act.

**COUNT 54**

**VIOLATION OF HRS 480-2**

**INJUNCTIVE RELIEF**

434. The averments of paragraphs 57-102 are incorporated by reference.

435. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

436. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of § 480-2, HRS, as pleaded in Count III.

437. Section 480-13 HRS permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

## **ILLINOIS**

438. The averments of paragraphs 57-102 are incorporated by reference.

439. Plaintiff Christopher Havron brings this action on behalf of himself and the Illinois Subclass.

440. Section 35 ILCS 630/3 imposes a sales tax on “telecommunications service” in the State of Illinois, providing, in part:

Beginning January 1, 1998, a tax is imposed upon the act or privilege of originating in this State or receiving in this State intrastate

telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. *However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State.*

§ 35 ILCS 630/3 (emphasis added).

### **ILLINOIS SUBCLASS**

441. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Illinois and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Illinois Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Illinois Subclass."

**COUNT 55**

**BREACH OF CONTRACT**

442. The averments of paragraphs 57-102 are incorporated by reference.

443. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

444. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

445. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 56**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

446. The averments of paragraphs 57-102 are incorporated by reference.

447. AT&T's breaches of the form contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every contract in Illinois under the common law of Illinois and the Restatement (Second) of Contracts §205.

448. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

449. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 57**

**DAMAGES UNDER THE ILLINOIS CONSUMER FRAUD ACT**

450. The averments of paragraphs 57-102 are incorporated by reference.

451. The Illinois Consumer Fraud Act, 815 ILCS 505/1, *et seq.*, was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair practices.

452. Section 815 ILCS 505/2 prohibits unfair methods of competition and unfair or deceptive acts or practices, including, but not limited to, the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that other rely upon the concealment, suppression or omission of such material fact, . . . whether any person has in fact been misled, deceived or damaged thereby.

453. Pursuant to 815 ILCS § 505/1(b), the term "merchandise" includes any sale of services enabling Internet access.

454. The acts and practices engaged in by AT&T, as set forth herein, constitute unfair, deceptive and/or fraudulent business practices in violation of 815 ILCS § 505/1 *et seq.*

455. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of 815 ILCS § 505.

456. AT&T intended that the Plaintiff and the Subclass rely on the aforesaid deceptive acts and practices.

457. The aforesaid deceptive acts and practices occurred in the course of conduct involving trade or commerce.

458. The aforesaid violations of the Illinois Consumer Fraud Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

459. AT&T's conduct as aforesaid was wanton, willful, outrageous and in reckless indifference to the rights of Plaintiff and others similarly situated and, therefore, warrants the imposition of punitive damages.

460. Plaintiff and the Subclass have been forced to hire attorneys to enforce his rights under the Illinois Consumer Fraud Act.

#### **COUNT 58**

##### **INJUNCTIVE RELIEF UNDER ILLINOIS CONSUMER FRAUD ACT**

461. The averments of paragraphs 57-102 are incorporated by reference.

462. AT&T continues to charge Plaintiff and other members of the Subclass state and local sales tax on the sale of internet access.

463. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of 815 ILCS § 505/1 *et seq.*, as pleaded in Count III.

464. 815 ILCS § 505/10 permits the Court to enter injunctive relief to prevent AT&T's continued violation of the law by continuing to charge state and local sales taxes on the sales of internet access.

#### **COUNT 59**

##### **UNJUST ENRICHMENT**

465. The averments of paragraphs 57-102 are incorporated by reference.

466. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

467. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

468. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

469. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

470. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

#### **COUNT 60**

#### **INJUNCTIVE RELIEF**

471. The averments of paragraphs 57-102 are incorporated by reference.

472. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

473. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

474. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

475. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

476. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

- A. certification of the proposed Subclass;
- B. actual damages in the amount of all "taxes" improperly charged by AT&T on sales of internet access to Plaintiff and the Subclass;
- C. punitive damages in an amount to punish Defendants' egregious conduct as set forth above and to deter Defendants and others from engaging in similar conduct;
- D. disgorgement of all funds collected by AT&T as "taxes" on internet access not remitted to the state of Illinois or any local taxing authority, and the return of such funds to Plaintiff and members of the Subclass;
- E. this Court's Order enjoining Defendants' collection of "taxes" on sales of internet access;
- F. attorneys' fees and those costs as are available under the law or equity;
- G. prejudgment interest in the statutory amount; and
- H. such other and further relief as the Court deems just and proper.

**INDIANA**

477. The averments of paragraphs 57-102 are incorporated by reference.

478. Plaintiff Martin Hoke brings this action on behalf of himself and the Indiana Subclass.

**INDIANA SUBCLASS**

479. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Indiana and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Indiana Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Indiana Subclass."

**COUNT 61**

**BREACH OF CONTRACT**

480. The averments of paragraphs 57-102 are incorporated by reference.

481. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

482. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

483. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 62**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

484. The averments of paragraphs 57-102 are incorporated by reference.

485. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Indiana under the common law of Indiana and the Restatement (Second) of Contracts §205.

486. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

487. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 63**

**VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT**

488. The averments of paragraphs 57-102 are incorporated by reference.

489. The Indiana Deceptive Consumer Sales Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

490. A sale of services enabling Internet access constitutes the "subject of a consumer transaction" within the meaning of I.C. 24-5-0.5-2.

491. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of I.C. 24-5-0.5-3(a)(1).

492. The aforementioned violations of the Deceptive Consumer Sales Act, have caused Plaintiff and the Subclass substantial and ascertainable loss of money or property and other damages.

493. Plaintiff and the Subclass have been forced to hire attorneys to enforce his rights under the Merchandising Practices Act.

#### **COUNT 64**

#### **VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT**

#### **INJUNCTIVE RELIEF**

494. The averments of paragraphs 57-102 are incorporated by reference.

495. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

496. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of the Indiana Deceptive Consumer Sales Act, as pleaded in Count III.

497. I.C. 24-5-0.5-4 permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**COUNT 65**

**UNJUST ENRICHMENT UNDER STATE LAW**

498. The averments of paragraphs 57-102 are incorporated by reference.

499. Under Indiana law, AT&T may retain a specified amount of the state sales tax it collects for itself.

500. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

501. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

502. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

503. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

504. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and wrongful conduct alleged herein.

**COUNT 66**

**INJUNCTIVE RELIEF**

505. The averments of paragraphs 57-102 are incorporated by reference.

506. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

507. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

508. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

509. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

510. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of himself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Indiana state consumer protection law.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Indiana or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, Indiana state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **IOWA**

511. The averments of paragraphs 57-102 are incorporated by reference.

512. Plaintiff Penny Annette Wood brings this action on behalf of herself and the Iowa Subclass.

513. Iowa Code Section 423.2(9), imposes a sales tax on “telecommunications service”:

“A tax of six percent is imposed upon the sales price from any mobile telecommunications service which this state is allowed to tax by the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. Section 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act that are deemed to be provided by the customer’s home service provider, shall be paid to the taxing jurisdiction whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunications service originates, terminates or passes through and shall in all other respects be taxes in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and

incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act, the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.”

Iowa Code Section 423.20 1 (h), defines “telecommunications services” to exclude charges for internet access from sales tax.

“h. “Mobile telecommunications service” means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. Section 124 (7).”

#### **IOWA SUBCLASS**

514. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Iowa and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Iowa Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Iowa Subclass.”

**COUNT 67**

**BREACH OF CONTRACT**

515. The averments of paragraphs 57-102 are incorporated by reference.

516. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

517. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 68**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

518. The averments of paragraphs 57-102 are incorporated by reference.

519. AT&T’s breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Iowa under the common law of Iowa and the Restatement (Second) of Contracts §205.

520. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

521. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 69**

**INJUNCTIVE RELIEF**

522. The averments of paragraphs 57-102 are incorporated by reference.

523. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

524. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

525. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

526. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

527. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Iowa or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

D. Attorneys fees as permitted by either the common law, state law or equity.

E. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

F. Such other and further relief as the Court deems proper.

### **KANSAS**

528. The averments of paragraphs 57-102 are incorporated by reference.

529. Plaintiff Christopher Hendrix brings this action on behalf of himself and the Kansas Subclass.

530. K.S.A. §79-3603(b) imposes a state sales tax on “telecommunications services”:  
“For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax ... upon the gross receipts from intrastate, interstate or international telecommunications services ...”

K.S.A. §79-3602(aaa)(6) defines “telecommunications service” so as to exclude internet access from sales tax.

“Telecommunications service means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between or among points ... Telecommunication service does not include internet access service[.]”

### **KANSAS SUBCLASS**

531. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Kansas and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Kansas Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Kansas Subclass.”

### **COUNT 70**

### **BREACH OF CONTRACT**

532. The averments of paragraphs 57-102 are incorporated by reference.

533. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

534. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

535. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 71**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

536. The averments of paragraphs 57-102 are incorporated by reference.

537. AT&T's breaches of the form Contracts with Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Kansas under the common law of Kansas and the Restatement (Second) of Contracts §205.

538. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

539. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 72**

#### **VIOLATION OF KANSAS CONSUMER PROTECTION ACT**

540. The averments of paragraphs 57-102 are incorporated by reference.

541. The Kansas Consumer Protection Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

542. A sale of services enabling internet access constitutes “services” within the meaning of the Kansas Consumer Protection Act, K.S.A. §50-624.

543. In failing to inform Plaintiff and the Subclass that it intended to charge them tax that was not due and in collecting tax that was not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of services in violation of K.S.A. §50-626 and §50-627.

544. The aforementioned violations of the Kansas Consumer Protection Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money, property and/or other damages.

545. Plaintiff and the Subclass have been forced to hire attorneys to enforce his rights under the Kansas Consumer Protection Act.

**COUNT 73**

**VIOLATION OF KANSAS CONSUMER PROTECTION ACT**

**INJUNCTIVE RELIEF**

546. The averments of paragraphs 57-102 are incorporated by reference.

547. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

548. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of K.S.A. §50-626 and §50-627, as pled in Count III.

549. K.S.A. §50-634 permits the Court to enter injunctive relief to stop AT&T’s continuing violation of the law by charging state and local sales taxes on the sale of internet access.

**COUNT 74**

**INJUNCTIVE RELIEF**

550. The averments of paragraphs 57-102 are incorporated by reference.

551. AT&T's continued billing of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

552. Unless enjoined from doing so, AT&T will continue to collect state and local sales tax on the sale of internet access from Plaintiff and the Subclass.

553. Plaintiff and the Subclass have no adequate remedy at law in that damages can only be recovered for state and local sales tax that AT&T has already collected on the sale of internet access. Damages cannot address AT&T's ongoing collection of such taxes in violation of the law.

554. Plaintiff and the Subclass have no adequate remedy at law to stop the continuing collection of such taxes.

555. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff, on behalf of himself and the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales taxes improperly billed by AT&T on the sale of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on internet access in violation of the Kansas Consumer Protection Act.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on internet access.

D. Attorneys fees as permitted by either the common law, K.S.A. §50-634 or equity.

E. Prejudgment interest in the statutory amount.

F. All costs of this action, recovery for which is permitted by law.

G. Such other and further relief as the Court deems just and proper.

### **KENTUCKY**

556. The averments of paragraphs 57-102 are incorporated by reference.

557. Plaintiff Heather Rahn brings this action on behalf of herself and the Kentucky Subclass.

558. KRS 139.200, imposes a sales tax on communication services:

“A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

\*\*\*

(2) The furnishing of the following:

\*\*\*

(e) Intrastate, interstate, and international communications services as defined in KRS 139.195, except the furnishing of pay telephone service as defined in KRS 139.195...”

KRS 139.195(28) defines “telecommunication services” to exclude internet access from sales tax as follows:

“(28) (a) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points...

\*\*\*

(c) “Telecommunications service” does not include:

\*\*\*

6. Internet access service as defined in 47 U.S.C. sec. 151...”

### **KENTUCKY SUBCLASS**

559. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Kentucky and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Kentucky Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives,

predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Kentucky Subclass."

#### **COUNT 75**

#### **BREACH OF CONTRACT**

560. The averments of paragraphs 57-102 are incorporated by reference.

561. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

562. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

563. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

#### **COUNT 76**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

564. The averments of paragraphs 57-102 are incorporated by reference.

565. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Kentucky under the common law of Kentucky and the Restatement (Second) of Contracts §205.

566. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

567. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 77**

**VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT**

568. The averments of paragraphs 57-102 are incorporated by reference.

569. Pursuant to KRS 367.170, the Kentucky Consumer Protection Act was enacted to protect persons from “unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.”

570. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed unfair, false, misleading, or deceptive acts or practices in the conduct of trade and/or commerce.

571. The aforementioned violations of the Kentucky Consumer Protection Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

572. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Consumer Protective Act.

**COUNT 78**

**VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT**

**INJUNCTIVE RELIEF**

573. The averments of paragraphs 57-102 are incorporated by reference.

574. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

575. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of KRS §367 as pled in Count 78.

576. KRS §367.190 and §367.220 permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

### **COUNT 79**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

577. The averments of paragraphs 57-102 are incorporated by reference.

578. Under Kentucky law, AT&T may retain 1.75% of the first \$1,000 of tax due and 1% of the tax due in excess of \$1,000 of the state sales tax it collects for itself.

579. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

580. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

581. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

582. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

583. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 80**

**INJUNCTIVE RELIEF**

584. The averments of paragraphs 57-102 are incorporated by reference.

585. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

586. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

587. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

588. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

589. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Kentucky Consumer Protection Act KRS § 367.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Kentucky or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either common law, Kentucky statute, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **LOUISIANA**

590. The averments of paragraphs 57-102 are incorporated by reference.

591. Plaintiff Heather Mazeitis brings this action on behalf of herself and the Louisiana Subclass.

592. Louisiana law (e.g., La. R.S. § 47:301) imposes a sales or use tax to be levied on “telecommunications services”, and particularly, upon calls originating or terminating in Louisiana.

### **LOUISIANA SUBCLASS**

593. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Louisiana and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Louisiana Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Louisiana Subclass."

**COUNT 81**

**BREACH OF CONTRACT**

594. The averments of paragraphs 57-102 are incorporated by reference.

595. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

596. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

597. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 82**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

598. The averments of paragraphs 57-102 are incorporated by reference.

599. AT&T's breaches of the form contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Louisiana under the Civil Code of Louisiana and the Restatement (Second) of Contracts §205.

600. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

601. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 83**

**VIOLATION OF CONSUMER PROTECTION LAWS**

602. The averments of paragraphs 57-102 are incorporated by reference.

603. Federal and state law prohibits, and protects the general public and consumers from, deceptive, fraudulent and unfair conduct.

604. A sale of services enabling Internet access constitutes "merchandise" within the meaning of federal and state consumer protection laws.

605. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact

in connection with the sale or use of merchandise in violation of federal and state law. The aforementioned violations of federal and state consumer protection laws, have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

606. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under federal and state law.

#### **COUNT 84**

##### **UNJUST ENRICHMENT UNDER LOUISIANA STATE LAW**

607. The averments of paragraphs 57-102 are incorporated by reference.

608. Upon information and belief, under Louisiana law, AT&T may retain a percentage of the state sales tax it collects for itself.

609. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

610. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

611. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

612. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

613. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 85**

**INJUNCTIVE RELIEF**

614. The averments of paragraphs 57-102 are incorporated by reference.

615. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

616. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

617. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

618. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

619. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Louisiana consumer protection law.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the State of Louisiana or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either federal or state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further general and equitable relief as the Court deems proper.

### **MAINE**

620. The averments of paragraphs 57-102 are incorporated by reference.

621. Plaintiff Jamie Kilbreth brings this action on behalf of herself and the Maine Subclass.

622. Maine imposes a tax on telecommunications services pursuant to § 2552 (R.S. Maine).

623. §2252(20)(A) defines telecommunications services expressly to exclude “internet access service.”

### **MAINE SUBCLASS**

624. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Maine and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Maine Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Maine Subclass."

**COUNT 86**

**BREACH OF CONTRACT**

625. The averments of paragraphs 57-102 are incorporated by reference.

626. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

627. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

628. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

**COUNT 87**

**UNJUST ENRICHMENT**

629. The averments of paragraphs 57-102 are incorporated by reference.

630. Under Maine law, AT&T may retain a percentage of the state sales tax it collects for itself.

631. On information and belief, AT&T retains the permitted amount of the state sales tax it collects and thus obtains a legal benefit.

632. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass and thus appreciates the benefit.

633. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

634. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass.

635. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 88**

#### **VIOLATION OF § 207 M.R.S.A.**

636. The averments of paragraphs 57-102 are incorporated by reference.

637. The Maine Unfair Trade Practices Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

638. A sale of services enabling Internet access constitutes “merchandise” within the meaning of § 207 M.R.S.A.

639. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and

suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of § 207 M.R.S.A.

640. The aforementioned violations of the § 207 M.R.S.A. have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

641. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Maine Unfair Trade Practices Act.

642. Plaintiff made the pre-suit demand/settlement offer as required by § 213-1A M.R.S.A.

### **COUNT 89**

### **VIOLATION OF § 207 MRSA**

### **INJUNCTIVE RELIEF**

643. The averments of paragraphs 57-102 are incorporated by reference.

644. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

645. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of § 207 M.R.S.A, as pleaded above.

646. Section 213 M.R.S.A. permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

## **MARYLAND**

647. The averments of paragraphs 57-102 are incorporated by reference.

648. Plaintiff Bonnie Meshulam brings this action on behalf of herself and the Maryland Subclass.

649. Maryland law imposes a 6% sales tax on “taxable services” pursuant to MD Code, Tax – General, sections 11-104(a) and 11-102.

“Taxable services” include “cellular telephone and other mobile communications services,” MD Code, Tax – General, section 11-101(m)(4), including those provided by AT&T to its mobile customers in Maryland.

650. Certain counties and cities in Maryland also impose local sales taxes on mobile communications services.

### **MARYLAND SUBCLASS**

651. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Maryland and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Maryland Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Maryland Subclass.”

**COUNT 90**

**BREACH OF CONTRACT**

652. The averments of paragraphs 57-102 are incorporated by reference.

653. Despite the prohibition by state law and the Internet Tax Freedom Act on the imposition of state and local taxes on internet access, AT&T charged Plaintiff and the Subclass state and local sales tax for internet access.

654. In so doing, AT&T breached its contract with Plaintiff (and its contracts with the Subclass).

655. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 91**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

656. The averments of paragraphs 57-102 are incorporated by reference.

657. AT&T entered into a written contract with Plaintiff and the Subclass. The common law of Maryland implies a covenant of good faith and fair dealing into this contract.

658. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by charging the Plaintiff and the Subclass, unfairly and in violation of the Internet Tax Freedom Act, state and local sales tax for internet access.

659. The abovementioned breaches of contract and of the covenant of good faith and fair dealing have caused damages to the Plaintiff and to the Subclass.

**COUNT 92**

**INJUNCTIVE RELIEF**

660. The averments of paragraphs 57-102 are incorporated by reference.

661. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect.

662. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

663. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

664. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

665. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**COUNT 93**

**VIOLATION OF MARYLAND CONSUMER PROTECTIVE ACT**

666. The averments of paragraphs 57-102 are incorporated by reference.

667. The Maryland Consumer Protection Act ("MCPA") was enacted to protect Maryland consumers from "unlawful consumer practices" and provides a private right of action for consumers like Plaintiff. Md. Code, Commercial Law, §13-102 and 13-408.

668. AT&T is a “merchant” as that term is defined in Md. Code, Commercial Law, §13-101 and is therefore subject to the provisions of the MCPA.

669. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of services in violation of Md. Code, Commercial Law, §13-301.

670. The aforementioned violations of the MCPA have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

671. Plaintiff has been forced to hire attorneys to enforce her rights under the MCPA and seeks all damages available under the MCPA, including attorney fees.

WHEREFORE, Plaintiff, on behalf of herself and the Subclass, requests a trial by jury and seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

C. Attorneys fees as permitted by law.

D. Prejudgment interest in the statutory amount.

E. All costs of this action recovery for which is permitted by law.

F. Such other and further relief as the Court deems proper.

## **MASSACHUSETTS**

672. The averments of paragraphs 57-102 are incorporated by reference.

673. Plaintiff Lesley Rock brings this action on behalf of herself and the Massachusetts Subclass.

674. Although, under 830 CMR 64H.1.6, a sales tax is imposed on “telecommunications services” in Massachusetts, under G.L. ch. 64H, § 6, sales that are “exempt” from sales tax include all sales “which the commonwealth is prohibited from taxing under the constitution or laws of the United States.”

### **MASSACHUSETTS SUBCLASS**

675. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Massachusetts and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Massachusetts Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Massachusetts Subclass.”

**COUNT 94**

**BREACH OF CONTRACT**

676. The averments of paragraphs 57-102 are incorporated by reference.

677. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

678. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

679. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 95**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

680. The averments of paragraphs 57-102 are incorporated by reference.

681. AT&T's breaches of the form contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T's covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every contract in Massachusetts under the common law of Massachusetts and the Restatement (Second) of Contracts §205.

682. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

683. The above-mentioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 96**

**INJUNCTIVE RELIEF**

684. The averments of paragraphs 57-102 are incorporated by reference.

685. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

686. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of federal and Massachusetts law, as pleaded above.

687. Fed. R. Civ. P. 65, like its Massachusetts counterpart, Mass. R. Civ. P. 65, permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

688. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

689. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

690. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

691. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

692. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**COUNT 97**

**UNJUST ENRICHMENT UNDER STATE LAW**

693. The averments of paragraphs 57-102 are incorporated by reference.

694. To the extent that AT&T has retained any amount of the state sales tax it has collected, AT&T has been unjustly enriched at the expense of Plaintiff and the Subclass.

695. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of any amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Massachusetts or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

D. Attorneys fees and expenses as permitted by the common and statutory law of Massachusetts, federal law and equity.

E. Prejudgment interest in the statutory amount.

- F. All costs of this action recovery for which is permitted by law.
- G. Such other and further relief as the Court deems proper.

**MICHIGAN**

696. The averments of paragraphs 57-102 are incorporated by reference.

697. Plaintiff Kathy Johnson brings this action on behalf of herself and the Michigan Subclass.

698. That MCL 205.93a imposes a use tax on “telecommunications service”:

Sec. 3a. (1) The use or consumption of the following services is taxed under this act in the same manner as tangible personal property is taxed under this act:

(a) Except as provided in section 3b, intrastate telecommunications services that both originate and terminate in this state, including, but not limited to, intrastate private communication services, ancillary services, conference bridging service, 900 service, pay telephone service other than coin-operated telephone service, and value-added nonvoice data service, but excluding 800 service, coin-operated telephone service, fixed wireless service, 1-way paging service, prepaid calling service, telecommunications nonrecurring charges, and directory advertising proceeds.

699. That MCL 205.93a(5)(s)(vi), defines “telecommunications services” to exclude charges for internet access from the use tax.

700. That MCL 205.93b, imposes a use tax on “mobile wireless services”, which is defined by MCL 205.93b(9)(h) as: “a telecommunication service that is transmitted, conveyed or routed, regardless of the technology used, whereby the origination or termination points of the

transmission, conveyance, or routing are not fixed, including but not limited to, telecommunication services that are provided by a commercial mobile radio service provider.”

701. That MCL 205.93b(9)(m)(vi), defines “telecommunications services” to exclude charges for internet access from the use tax.

### **MICHIGAN SUBCLASS**

702. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Michigan and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Michigan Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Michigan Subclass.”

### **COUNT 98**

### **BREACH OF CONTRACT**

703. The averments of paragraphs 57-102 are incorporated by reference.

704. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

705. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

706. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 99**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

707. The averments of paragraphs 57-102 are incorporated by reference.

708. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T's covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Michigan under the common law of Michigan and the Restatement (Second) of Contracts §205.

709. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local use/sales tax for internet access.

710. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass to suffer economic damages.

### **COUNT 100**

#### **VIOLATION OF MICHIGAN CONSUMER PROTECTION ACT**

711. The averments of paragraphs 57-102 are incorporated by reference.

712. The Michigan Consumer Protect Act, MCL 445.901 *et seq*, was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

713. AT&T's sale of services enabling Internet access falls within Michigan's Consumer Protection Act.

714. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in violation of multiple sections of MCL 445.903.

715. The aforementioned violations of the Michigan Consumer Protection Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

716. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Michigan Consumer Protection Act.

**COUNT 101**

**VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT**

**INJUNCTIVE RELIEF**

717. The averments of paragraphs 57-102 are incorporated by reference.

718. AT&T continues to charge Plaintiff and the Subclass state and local use/sales tax on the sale of internet access.

719. The charging of state and local use/sales tax on the sale of internet access when no such tax is due is a violation of MCL 205.93a, MCL 205.93b, and MCL 445.901, *et seq*, as pleaded in Count III.

720. That MCL 445.911 permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local use/sales taxes on the sales of internet access.

### **COUNT 102**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

721. The averments of paragraphs 57-102 are incorporated by reference.

722. Upon information and belief, AT&T has improperly retained the total amount of the use/sales tax that it collected from the Plaintiff and the Subclass.

723. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

724. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

725. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

726. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 103**

#### **INJUNCTIVE RELIEF**

727. The averments of paragraphs 57-102 are incorporated by reference.

728. AT&T's continued charging of Plaintiff and the Subclass of state and local use/sales tax on the sale of internet access results in a continuing harm to Plaintiff and the

Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

729. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local use/sales tax on the sale of internet access.

730. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local use/sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

731. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

732. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local use/sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff, on behalf of herself and the Subclass, seeks the following relief:

A. Damages in the amount of state and local use/sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local use/sales tax improperly charged by AT&T on sales of internet access in violation of the Michigan Consumer Protection Act.

C. Disgorgement of all funds collected by AT&T as state and local use/sales tax for the sales of internet access not remitted to the state of Michigan or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local use/sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, statute, Michigan Consumer Protection Act, contract or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action, recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **MINNESOTA**

733. The averments of paragraphs 57-102 are incorporated by reference.

734. Plaintiff Aaron White brings this action on behalf of himself and the Minnesota Subclass.

735. Minn. Stat. § 297A.61, subd. 24 imposes a tax on telecommunications services, which are defined as “the electronic transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.” Minn. Stat. § 297A.61, subd. 24(c)(6) provides that telecommunications services do not include Internet access service.

### **MINNESOTA SUBCLASS**

736. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in

Minnesota and who were charged Internet Taxes on bills issued from November

1, 2005 through [the date immediately preceding the date on which AT&T

Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Minnesota Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Minnesota Subclass."

#### **COUNT 104**

#### **BREACH OF CONTRACT**

737. The averments of paragraphs 57-102 are incorporated by reference.

738. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act and Minnesota law, AT&T charged White and the Subclass sales tax for Internet access.

739. In doing so, AT&T breached its contract with White and the Subclass.

740. As a result of the breach of contract, White and the Subclass were damaged in the amount of the sales tax charged by AT&T for Internet access, together with interest on the money AT&T has wrongfully charged to White and the Subclass.

#### **COUNT 105**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

741. The averments of paragraphs 57-102 are incorporated by reference.

742. AT&T's breaches of the form contract with White and the Subclass, as alleged above, also constitute a breach of AT&T's covenant of good faith and fair dealing to White and the Subclass, which is imputed into every contract in Minnesota under the common law of Minnesota, and the Restatement (Second) of Contracts § 205.

743. AT&T breached its duty of good faith and fair dealing to White and the Subclass by unfairly charging White and the Subclass state and local taxes for Internet access.

744. The above-mentioned breaches of contract and covenant of good faith and fair dealing have caused White and the Subclass economic damages.

#### **COUNT 106**

#### **VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD ACT**

745. The averments of paragraphs 57-102 are incorporated by reference.

746. The Minnesota Prevention of Consumer Fraud Act (MPCFA) was enacted to prohibit and protect persons from fraud, false pretense, false promise, misrepresentation, and misleading or deceptive practices in connection with the sale of any merchandise (Minn. Stat. § 325F.69, subd. 1).

747. A sale of services enabling Internet access constitutes "merchandise" within the meaning of the MPCFA (Minn. Stat. § 325F.68, subd. 2).

748. In failing to inform White and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed fraud, false pretense, false promise, misrepresentation, and misleading or deceptive practices as it omitted, concealed, and suppressed material information and failed to inform White and the Subclass of a material fact in connection with the sale of merchandise in violation of the MPCFA.

749. The aforementioned violations of the MPCFA have caused White and the Subclass substantial and ascertainable loss of money and /or property and other damages.

750. White has been forced to hire attorneys to enforce his rights under the MPCFA, and counsel is authorized to proceed on behalf of White pursuant to Minn. Stat. § 8.31, subd. 3a.

**COUNT 107**

**VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD ACT**

**INJUNCTIVE RELIEF**

751. The averments of paragraphs 57-102 are incorporated by reference.

752. AT&T continues to charge White and the Subclass state and local sales tax on the sale of Internet access.

753. The charging of state and local sales tax on the sale of Internet access when no such tax is due is a violation of Minnesota law, as pleaded in Count Three. Minn. Stat. § 325F.70 permits the Court, upon proof that defendant has engaged in a practice made enjoined by § 325F.69, to enjoin the future commission of such practices.

754. Minn. Stat. § 8.31, subd. 3(a) allows any person injured by a violation of Minn. Stat. § 325F.69 to bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the Court.

**COUNT 108**

**INJUNCTIVE RELIEF**

755. The averments of paragraphs 57-102 are incorporated by reference.

756. AT&T's continuing charging of Plaintiff and the Subclass of state and local sales tax on the sale of Internet access results in a continuing harm to White and the Subclass in that

White and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

757. Unless enjoined from doing so, AT&T will continue to collect from White and the Subclass state and local sales tax on the sale of Internet access.

758. White and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of Internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

759. White and the Subclass have no adequate remedy at law to stop the collection of such taxes.

760. White and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of Internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, White, on behalf of himself and the Subclass, seeks the following relief:

A. Damages in the amount of the state and local sales taxes improperly charged by AT&T on sales of Internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for White and the Subclass in the amount of the state and local sales taxes improperly charged by AT&T on sales of Internet access in violation of the Internet Tax Freedom Act and the Minnesota Protection of Consumer Fraud Act.

C. For an order of this Court enjoining the collection by AT&T of state and local sales taxes on sales of Internet access.

D. Attorney's fees as permitted by the Minnesota Protection of Consumer Fraud Act, common law, and/or equity.

- E. Pre-judgment interest in the statutory amount.
- F. All costs of this action, recovery for which is permitted by law.
- G. Such other and further relief as the Court deems just and proper.

**MISSISSIPPI**

761. The averments of paragraphs 57-102 are incorporated by reference.

762. Plaintiff Michael Bosarge and Richard Garner bring this action on behalf of themselves and the Mississippi Subclass.

763. MISSISSIPPI CODE ANNOTATED § 27-65-19 imposes a sales tax on “telecommunications services” as follows:

(e)(i) Upon every person providing services in this state, there is hereby levied, assessed and shall be collected:

1. A tax equal to seven percent (7%) of the gross income received from all charges for intrastate telecommunications services.

2. A tax equal to seven percent (7%) of the gross income received from all charges for interstate telecommunications services.

3. A tax equal to seven percent (7%) of the gross income received from all charges for international telecommunications services.

4. A tax equal to seven percent (7%) of the gross income received from all charges for ancillary services.

5. A tax equal to seven percent (7%) of the gross income received from all charges for products delivered electronically, including, but not limited to, software, music, games, reading materials or ring tones.

764. MISSISSIPPI CODE ANNOTATED § 27-65-19 defines “telecommunications services”

to exclude charges for internet access from sales tax:

(iv) For purposes of this paragraph (e):

1. “Telecommunications service” means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between points. The term “telecommunications service” includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. The term “telecommunications service” shall not include:

a. Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

b. Installation or maintenance of wiring or equipment on a customer's premises;

c. Tangible personal property;

d. Advertising, including, but not limited to, directory advertising;

- e. Billing and collection services provided to third parties;
- f. Internet access service;
- g. Radio and television audio and video programming services regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- h. Ancillary services; or
- i. Digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ring tones.

**MISSISSIPPI SUBCLASS**

765. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Mississippi and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Mississippi Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Mississippi Subclass."

### **COUNT 109**

#### **BREACH OF CONTRACT**

766. The averments of paragraphs 57-102 are incorporated by reference.

767. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiffs and the Subclass sales tax for internet access.

768. In so doing, AT&T breached its contract with Plaintiffs and the Subclass.

769. As a result of the breach of contract, Plaintiffs and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiffs and the Subclass.

### **COUNT 110**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

770. The averments of paragraphs 57-102 are incorporated by reference.

771. AT&T's breaches of the form Contracts with the Plaintiffs and the Subclass, as alleged above, also constitute a breach of AT&T's covenant of good faith and fair dealing to the Plaintiffs and the Subclass, which is imputed into every contract in Mississippi under the common law of Mississippi and the Restatement (Second) of Contracts §205.

772. AT&T breached its duty of good faith and fair dealing to the Plaintiffs and the Subclass by unfairly charging the Plaintiffs and the Subclass state and/or local sales tax for internet access.

773. The above-mentioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiffs and the Subclass economic damages.

### **COUNT 111**

#### **VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT**

774. The averments of paragraphs 57-102 are incorporated by reference.

775. The Mississippi Consumer Protection Act was enacted to prohibit, and protect persons from, unfair and deceptive trade practices.

776. The sale of services enabling internet access is a good and/or service which is governed by the Mississippi Consumer Protection Act.

777. In failing to inform Plaintiffs and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiffs and the Subclass of a material fact in violation of the Mississippi Consumer Protection Act, found at MISSISSIPPI CODE ANNOTATED §75-24-1, *et seq.*

778. The aforementioned violations of the Mississippi Consumer Protection Act have caused Plaintiffs and the Subclass substantial and ascertainable loss of money and/or property and other damages.

779. Plaintiffs and the Subclass have been forced to hire attorneys to enforce their rights under the Mississippi Consumer Protection Act.

**COUNT 112**

**INJUNCTIVE RELIEF**

780. The averments of paragraphs 57-102 are incorporated by reference.

781. AT&T's continued charging of Plaintiffs and the Subclass of state and/or local sales tax on the sale of internet access results in a continuing harm to Plaintiffs and the Subclass in that Plaintiffs and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

782. Unless enjoined from doing so, AT&T will continue to collect from Plaintiffs and the Subclass state and/or local sales tax on the sale of internet access.

783. Plaintiffs and the Subclass have no adequate remedy at law in that damages can only address state and/or local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

784. Plaintiffs and the Subclass have no adequate remedy at law to stop the collection of such taxes.

785. Plaintiffs and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and/or local sales taxes on the sale of internet access, absent this Court's order enjoining AT&T from the collection of such taxes.

PLAINTIFFS DEMAND A TRIAL BY JURY.

WHEREFORE, Plaintiffs on their own behalf and on behalf of the Subclass, seek the following relief:

A. Damages in the amount of state and/or local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract;

B. Damages for Plaintiffs and the Subclass in the amount of state and/or local sales tax improperly charged by AT&T on sales of internet access in violation of the Mississippi Consumer Protection Act, MISSISSIPPI CODE ANNOTATED §75-24-1, *et seq.*;

C. Disgorgement of all funds collected by AT&T as state and/or local sales tax on sales of internet access which are not remitted to the State of Mississippi or any local taxing authority, and the return of such funds to the Plaintiffs and members of the Subclass;

D. An order of this Court enjoining the collection by AT&T of state and/or local sales tax on sales of internet access;

E. Any and all damages and penalties as permitted by law, including but not limited to damages and penalties imposed by state or federal statute;

F. Attorneys' fees, as permitted by law, including but not limited to damages and penalties imposed by state or federal statute;

G. Pre-judgment and post-judgment interest in the statutory amounts;

H. All costs of this action as permitted by law; and

I. Any and all such other and further relief as the Court deems proper.

## **MISSOURI**

786. The averments of paragraphs 57-102 are incorporated by reference.

787. Plaintiff Sara Parker Pauley and Bert B. Kimble bring this action on behalf of themselves and the Missouri Subclass.

788. Section 144.020.1(4), RSMo, imposes a sales tax on "telecommunications service":

[A]ll sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of

telecommunications subscribers for the transmission of messages and conversations and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto; except that...any amounts paid for access to the Internet...shall not be considered as amounts paid for telecommunications services[.]

789. Section 144.010(13), RSMo, defines “telecommunications services” to exclude charges for internet access from sales tax.

[T]he transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

Telecommunications service does not include the following if such services are separately stated on the customer's bill or on records of the seller maintained in the ordinary course of business:

(a) Access to the Internet . . . except the amount paid for the telecommunications service used to provide such access[.]

### **MISSOURI SUBCLASS**

790. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Missouri and who were charged Internet Taxes on bills issued from November 1, 2005

through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Missouri Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Missouri Subclass."

### **COUNT 113**

#### **BREACH OF CONTRACT**

791. The averments of paragraphs 57-102 are incorporated by reference.

792. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiffs and the Subclass sales tax for internet access.

793. In so doing, AT&T breached its contracts with Plaintiffs and the Subclass.

794. As a result of the breach of contract, Plaintiffs and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiffs and the Subclass.

### **COUNT 114**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

795. The averments of paragraphs 57-102 are incorporated by reference.

796. AT&T's breaches of the form Contracts with the Plaintiffs and the Subclass, as alleged above, also constitutes a breach of their good faith and fair dealing to Plaintiffs and the Subclass, which is imputed into every Contract in Missouri under the common law of Missouri and the Restatement (Second) of Contracts §205.

797. AT&T breached its duty of good faith and fair dealing to Plaintiffs and the Subclass by unfairly charging Plaintiffs and the Subclass state and local sales tax for internet access.

798. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused Plaintiffs and the Subclass economic damages.

### **COUNT 115**

### **VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT**

### **CHAPTER 407 RSMO**

799. The averments of paragraphs 57-102 are incorporated by reference.

800. The Missouri Merchandising Practices Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

801. A sale of services enabling Internet access constitutes "merchandise" within the meaning of Chapter 407 RSMo. § 407.010(4), RSMO.

802. In failing to inform Plaintiffs and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiffs and the Subclass of a material fact in connection with the sale of merchandise in violation of § 407.020, RSMo.

803. The aforementioned violations of the Missouri Merchandising Practices Act, Chapter 407 RSMo., have caused Plaintiffs and the Subclass substantial and ascertainable loss of money and/or property and other damages.

804. Plaintiffs and the Subclass have been forced to hire attorneys to enforce their rights under the Merchandising Practices Act.

**COUNT 116**

**VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT**

**CHAPTER 407 RSMO**

**INJUNCTIVE RELIEF**

805. The averments of paragraphs 57-102 are incorporated by reference.

806. AT&T continues to charge Plaintiffs and the Subclass state and local sales tax on the sale of internet access.

807. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of § 407.020, RSMo, as pleaded in Count III.

808. Section 407.025 RSMo permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**COUNT 117**

**UNJUST ENRICHMENT UNDER STATE LAW**

809. The averments of paragraphs 57-102 are incorporated by reference.

810. Under Missouri law, AT&T may retain 2% of the state sales tax it collects for itself.

811. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

812. AT&T collects this amount to the detriment of Plaintiffs and members of the Subclass.

813. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

814. As a result AT&T is unjustly enriched at the expense of Plaintiffs and the Subclass.

815. Accordingly, Plaintiffs and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 118**

#### **INJUNCTIVE RELIEF**

816. The averments of paragraphs 57-102 are incorporated by reference.

817. AT&T's continued charging of state and local sales tax on the sale of internet access to Plaintiffs and the Subclass results in a continuing harm to Plaintiffs and the Subclass in that Plaintiffs and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

818. Unless enjoined from doing so, AT&T will continue to collect from Plaintiffs and the Subclass state and local sales tax on the sale of internet access.

819. Plaintiffs and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

820. Plaintiffs and the Subclass have no adequate remedy at law to stop the collection of such taxes.

821. Plaintiffs and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiffs on behalf of themselves and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiffs and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Missouri Merchandising Practices Act.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Missouri or any local taxing authority and return of such funds to the Plaintiffs and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, § 407.025, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

**NEBRASKA**

822. The averments of paragraphs 57-102 are incorporated by reference.

823. Plaintiff Matthew Cranford brings this action on behalf of himself and the Nebraska Subclass.

824. Neb. Rev. Stat. 77-2703.04 imposes a sales tax on “telecommunications service” but sub-section (7)(aa)(vi) specifically excludes “internet access service” from the definition of “telecommunications service.”

### **NEBRASKA SUBCLASS**

825. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Nebraska and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Nebraska Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Nebraska Subclass.”

### **COUNT 119**

### **BREACH OF CONTRACT**

826. The averments of paragraphs 57-102 are incorporated by reference.

827. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

828. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

829. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 120**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

830. The averments of paragraphs 57-102 are incorporated by reference.

831. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass.

832. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

833. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 121**

#### **VIOLATION OF NEBRASKA DECEPTIVE TRADE PRACTICES ACT**

834. The averments of paragraphs 57-102 are incorporated by reference.

835. The Nebraska Deceptive Trade Practices Act, Neb. Rev. Stat. 87-301, et. seq., prohibits unfair and deceptive trade practices and protect persons from, deceptive, fraudulent and unfair conduct.

836. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise and provision of services in violation of Neb. Rev. Stat. 87-301, et. seq.

837. The aforementioned violations of the Nebraska Deceptive Trade Practices Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

838. Plaintiff and the Subclass have been forced to hire attorneys to enforce his rights under the Nebraska Deceptive Trade Practices Act.

### **COUNT 122**

#### **VIOLATION OF NEBRASKA DECEPTIVE TRADE PRACTICE**

#### **INJUNCTIVE RELIEF**

839. The averments of paragraphs 57-102 are incorporated by reference.

840. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

841. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of the Nebraska Deceptive Trade Practices Act,, as pleaded in Count III.

842. Neb. Rev. Stat. 87-303 permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**COUNT 123**

**UNJUST ENRICHMENT UNDER STATE LAW**

843. The averments of paragraphs 57-102 are incorporated by reference.

844. Under Nebraska law, AT&T may retain for itself 2.5% of the state sales tax it collects up to three thousand dollars, and one-half percent for amounts above three thousand dollars each month.

845. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

846. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

847. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

848. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

849. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 124**

**INJUNCTIVE RELIEF**

850. The averments of paragraphs 57-102 are incorporated by reference.

851. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that

Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

852. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

853. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

854. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

855. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Nebraska Deceptive Trade Practices Act.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Nebraska or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as allowed by law or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Punitive damages as allowed by law.

I. Such other and further relief as the Court deems proper.

### **NEVADA**

856. The averments of paragraphs 57-102 are incorporated by reference.

857. Plaintiff Audrey J. Mitchell brings this action on behalf of herself and the Nevada Subclass.

858. Nevada § 6.13.020 (R.S. Nev.) provides that “(a) Every public utility providing any telecommunications service to any customer located within the county must have a valid unexpired business license issued pursuant to this code and remit to the department a quarterly license fee that it has collected from its customers....” This license fee is measured by the gross revenue of the provider.

859. “Telecommunications service” has the same meaning as provided in 47 U.S.C. Section 153 that is, it excludes internet access service.

### **NEVADA SUBCLASS**

860. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Nevada and who were charged Internet Taxes on bills issued from November 1, 2005

through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Nevada Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Nevada Subclass."

#### **COUNT 125**

#### **BREACH OF CONTRACT**

861. The averments of paragraphs 57-102 are incorporated by reference.

862. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

863. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

864. The breach is an incidental breach entitling Plaintiff and the Subclass to damages under Nevada law.

865. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

#### **COUNT 126**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

866. The averments of paragraphs 57-102 are incorporated by reference.

867. AT&T breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Nevada under case law so as to effectuate the reasonable intentions of the parties, and is supported by the Restatement (Second) of Contracts §205.

868. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

869. In charging the taxes prohibited by law AT&T deliberately contravened the intention and spirit of the contract and acted in a manner inconsistent with the justified expectations of the plaintiff.

870. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 127**

#### **UNJUST ENRICHMENT**

871. The averments of paragraphs 57-102 are incorporated by reference.

872. Under Nevada law, AT&T may retain a percentage of the state sales tax it collects for itself.

873. On information and belief, AT&T retains the permitted amount of the state sales tax it collects and thus wrongfully obtains a legal benefit.

874. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass and thus appreciates the benefit.

875. AT&T retains funds that in good conscience and equity it should not be entitled to retain.

876. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass.

877. AT&T profits from its wrongful conduct in collecting and retaining the taxes. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

**NEW HAMPSHIRE**

878. The averments of paragraphs 57-102 are incorporated by reference.

879. Plaintiff Heather Feenstra-Kretschmar brings this action on behalf of herself and the New Hampshire Subclass.

**NEW HAMPSHIRE SUBCLASS**

880. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in New Hampshire and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the New Hampshire Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The New Hampshire Subclass."

**COUNT 128**

**BREACH OF CONTRACT**

881. The averments of paragraphs 57-102 are incorporated by reference.

882. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

883. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

884. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

### **COUNT 129**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

885. The averments of paragraphs 57-102 are incorporated by reference.

886. AT&T breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in New Hampshire under case law so as to effectuate the reasonable intentions of the parties, and is supported by the Restatement (Second) of Contracts §205.

887. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

888. In charging the taxes prohibited by law AT&T acted in a manner inconsistent with the justified expectations of the plaintiff.

889. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **COUNT 130**

#### **UNJUST ENRICHMENT**

890. The averments of paragraphs 57-102 are incorporated by reference.

891. Under New Hampshire law, AT&T may retain a percentage of the state sales tax it collects for itself.

892. On information and belief, AT&T retains the permitted amount of the state sales tax it collects and thus wrongfully obtains a legal benefit.

893. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass and thus appreciates the benefit.

894. AT&T retains funds that in good conscience and equity it should not be entitled to retain.

895. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass.

896. AT&T profits from its wrongful conduct in collecting and retaining the taxes.

897. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 131**

#### **VIOLATION OF N.H. REV. STAT. § 358-A:2**

898. The averments of paragraphs 57-102 are incorporated by reference.

899. The New Hampshire Consumer Protection Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

900. A sale of services enabling Internet access constitutes “merchandise” within the meaning of N.H. Rev. Stat. § 358-A:2.

901. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of N.H. Rev. Stat. § 358-A:2.

902. ATT’s conduct is objectionable and attains a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.

903. The aforementioned violations of the N.H. Rev. Stat. § 358-A:2. have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

904. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Unlawful Trade Practices Act.

**COUNT 132**

**VIOLATION OF § N.H. REV. STAT. § 358-A:10**

**INJUNCTIVE RELIEF**

905. The averments of paragraphs 57-102 are incorporated by reference.

906. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

907. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of N.H. Rev. Stat. § 358-A:2., as pleaded above.

908. N.H. Rev. Stat. § 358-A:10. permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**NEW JERSEY**

909. The averments of paragraphs 57-102 are incorporated by reference.

910. Plaintiff Ronald Bendien brings this action on behalf of himself and the New Jersey Subclass.

911. N.J.S.A. 54:32B-2 (cc)(12) defines "telecommunications services" to exclude charges for Internet access from state sales tax.

**NEW JERSEY SUBCLASS**

912. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in New Jersey and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the New Jersey Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The New Jersey Subclass."

**COUNT 133**

**AS AGAINST THE DEFENDANT**

**BREACH OF CONTRACT**

913. The averments of paragraphs 57-102 are incorporated by reference.

914. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for Internet access.

915. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

916. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for Internet access, together with interest on the money, which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 134**

**AS AGAINST THE DEFENDANT**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

917. The averments of paragraphs 57-102 are incorporated by reference.

918. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitutes a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in New Jersey under the common law of New Jersey and the Restatement (Second) of Contracts §205.

919. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for Internet access.

920. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 135**

**AS AGAINST THE DEFENDANT**

**VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT**

**(N.J.S.A. 56:8-1 et seq)**

921. The averments of paragraphs 57-102 are incorporated by reference.

922. The New Jersey Consumer Fraud Act was enacted to prohibit, and protect persons and other entities from, deceptive, fraudulent and unfair conduct.

923. A sale of services enabling Internet access constitutes "merchandise" within the meaning of N.J.S.A. 56:8-1 et seq.

924. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of N.J.S.A. 56:8-1 et seq.

925. The aforementioned violations of the New Jersey Consumer Fraud Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages. As a result, Plaintiff is entitled to treble damages and the recovery of attorneys' fees. Plaintiff also seeks injunctive relief from the Court.

**COUNT 136**

**AS AGAINST THE DEFENDANT**

**UNJUST ENRICHMENT UNDER STATE LAW**

926. The averments of paragraphs 57-102 are incorporated by reference.

927. On information and belief, AT&T retains the difference in the sales tax properly owed to the State of New Jersey and that for which it is exempt under state law.

928. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

929. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

930. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

931. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 137**

**AS AGAINST THE DEFENDANT**

**INJUNCTIVE RELIEF**

932. The averments of paragraphs 57-102 are incorporated by reference.

933. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of Internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

934. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Class state and local sales tax on the sale of Internet access.

935. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of Internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

936. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

937. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of Internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff on behalf of herself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of Internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of Internet access in violation of the New Jersey Consumer Fraud Statute.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of Internet access not remitted to the state of New Jersey or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of Internet access.

E. Attorneys fees as permitted by either the common law, N.J.S.A. 56:8-1 et seq, or equity.

F. Prejudgment interest in the statutory amount.

G. Treble damages as permitted under NJ.S.A. 56:8-1 et seq.

H. All costs of this action recovery for which is permitted by law.

I. Such other and further relief as the Court deems proper.

## **NEW YORK**

938. The averments of paragraphs 57-102 are incorporated by reference.

939. Plaintiff Jonathan Macy brings this action on behalf of himself and the New York Subclass.

940. New York State Tax Law § 186-e (4)(c) excludes charges for Internet access from state sales tax.

### **NEW YORK SUBCLASS**

941. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in New York and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the New York Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The New York Subclass."

### **COUNT 138**

#### **BREACH OF CONTRACT**

942. The averments of paragraphs 57-102 are incorporated by reference.

943. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for Internet access.

944. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

945. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for Internet access, together with interest on the money, which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 139**

**(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

946. The averments of paragraphs 57-102 are incorporated by reference.

947. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitutes a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in New York under the common law of New York and the Restatement (Second) of Contracts §205.

948. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for Internet access.

949. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 140**

**VIOLATION OF NEW YORK CONSUMER FRAUD ACT**

**(N.Y.G.B.L. §349 et seq.)**

950. The averments of paragraphs 57-102 are incorporated by reference.

951. The New York Consumer Fraud Act was enacted to prohibit, and protect persons and other entities from, deceptive, fraudulent and unfair conduct.

952. A sale of services enabling Internet access constitutes "merchandise" within the meaning of N.Y.G.B.L. §349 et seq.

953. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of N.Y.O.B.L. §349 et seq.

954. The aforementioned violations of the New York Consumer Fraud Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages. As a result, Plaintiff is entitled to treble damages and the recovery of attorneys' fees. Plaintiff also seeks injunctive relief from the Court.

#### **COUNT 141**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

955. The averments of paragraphs 57-102 are incorporated by reference.

956. On information and belief, AT&T retains the difference in the sales tax properly owed to the State of New York and that for which it is exempt under state law.

957. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

958. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

959. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

960. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 142**

**INJUNCTIVE RELIEF**

961. The averments of paragraphs 57-102 are incorporated by reference.

962. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of Internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

963. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of Internet access.

964. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of Internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

965. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

966. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of Internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff on behalf of himself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of Internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of Internet access in violation of the New York Consumer Fraud Statute.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of Internet access not remitted to the state of New York or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of Internet access.

E. Attorney's fees as permitted by either the common law, N.Y.G.B.L. §349 et seq. et seq, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **NORTH CAROLINA**

967. The averments of paragraphs 57-102 are incorporated by reference.

968. Plaintiff Adrienne M. Fox brings this action on behalf of herself and the North Carolina Subclass.

969. N.C.G.S. § 105-164.4C imposes a sales tax on “telecommunications service.” N.C.G.S. § 105-164.4C provides that “[t]he gross receipts derived from providing telecommunications service. . . in this State are taxed at the rate set in G.S. 105-164.4(a)(4c).” N.C.G.S. § 105-164.4(a)(4c) in turn provides that “[t]he combined general rate applies to the gross receipts derived from providing telecommunications service. . . . A person who provides telecommunications service. . . is considered a retailer under this Article. These services are

taxed in accordance with G.S. 105-164.4C.” The “combined general rate” is defined by N.C.G.S. § 105-164.3(4a) as “the State’s general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.”

970. N.C.G.S. § 105-164.4C(h)(8) and § 105-164.3(48)(e) define “telecommunications services” to exclude charges for internet access from sales tax. N.C.G.S. § 105-164.3(48)(e) provides that “[t]he term [telecommunications service] does not include the following. . . e. Internet access service.” N.C.G.S. § 105-164.4C(h)(8) adopts this definition from § 105-164.3(48)(e) for § 105-164.4C, thereby excluding internet access from sales tax under § 105-164.4C.

971. The North Carolina Department of Revenue’s Sales and Use Tax Technical Bulletin § 21 published August 1, 2008 states that “[g]ross receipts derived from the following are not subject to tax either as a result of a specific exemption or as a result of the service being excluded from the definition of ‘telecommunications service[,]’ and lists “Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services” as among the services not subject to North Carolina sales tax.

#### **NORTH CAROLINA SUBCLASS**

972. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in North Carolina and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility

first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the North Carolina Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The North Carolina Subclass."

#### **COUNT 144**

#### **BREACH OF CONTRACT**

973. The averments of paragraphs 57-102 are incorporated by reference.

974. North Carolina does not impose sales tax on internet access service and federal law forbids such taxes.

975. Despite the lack of sales tax under North Carolina law and the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

976. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

977. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

## **COUNT 145**

### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

978. The averments of paragraphs 57-102 are incorporated by reference.

979. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T's implied covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in North Carolina under the common law of North Carolina and the Restatement (Second) of Contracts § 205.

980. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

981. The above mentioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

## **COUNT 146**

### **UNFAIR AND DECEPTIVE TRADE PRACTICES**

982. The averments of paragraphs 57-102 are incorporated by reference.

983. AT&T's actions in illegally charging sales tax for internet access as complained of herein constitute unfair and deceptive acts and practices, in and affecting commerce, in violation of N.C.G.S. § 75-1.1 *et seq.*

984. AT&T's sale of services enabling Internet access alleged herein is a business activity in and affecting commerce within the meaning of N.C.G.S. § 75-1.1.

985. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T engaged in actions that were

deceptive, unfair, and substantially injurious to North Carolina consumers, in violation of N.C.G.S. § 75-1.1.

986. In collecting purported taxes that were expressly forbidden by federal and state law enacted to promote internet usage by consumers by keeping internet access accessible, affordable, and untaxed, AT&T engaged in actions that violated public policy, in violation of N.C.G.S. § 75-1.1.

987. The aforementioned unfair and deceptive acts and practices have proximately caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other actual damages. Pursuant to N.C.G.S. §§ 75-16 and 16.1, Plaintiff and the Subclass are entitled to recover treble damages and attorneys' fees.

#### **COUNT 147**

#### **INJUNCTIVE RELIEF**

988. The averments of paragraphs 57-102 are incorporated by reference.

989. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

990. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

991. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes. Monetary damages alone can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

992. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**JURY TRIAL DEMAND**

WHEREFORE, Plaintiff on behalf of herself and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of N.C.G.S. § 75-1.1, including treble damages under N.C.G.S. § 75-16.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

D. Attorneys fees as permitted by N.C.G.S. § 75-16.1, any other applicable law, or equity.

E. Prejudgment interest in the statutory amount.

F. All costs of this action recovery for which is permitted by law.

G. Such other and further relief as the Court deems proper.

**OHIO**

993. The averments of paragraphs 57-102 are incorporated by reference.

994. Plaintiff John W. Wallace and Eleanor T. Wallace bring their action on behalf of themselves and the Ohio Subclass.

995. ORC §5739.02 imposes an excise tax on all retail sales including “telecommunications service” as defined in §5739.01(B)(3)(f).

996. ORC §5739.02(B)(47) excludes charges for internet access from sales tax:

The tax does not apply to the following:

...

(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.

### **OHIO SUBCLASS**

997. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Ohio and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Ohio Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Ohio Subclass.”

**COUNT 148**

**BREACH OF CONTRACT**

998. The averments of paragraphs 57-102 are incorporated by reference.

999. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiffs and the Subclass sales tax for internet access.

1000. In so doing, AT&T breached its contract with Plaintiffs and the Subclass.

1001. As a result of the breach of contract, Plaintiffs and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiffs and the Subclass.

**COUNT 149**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1002. The averments of paragraphs 57-102 are incorporated by reference.

1003. AT&T's breaches of the form Contracts with the Plaintiffs and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Ohio under the common law of Ohio and the Restatement (Second) of Contracts §205.

1004. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1005. The above mentioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 150**

**VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**

1006. The averments of paragraphs 57-102 are incorporated by reference.

1007. The Ohio Consumer Sales Practices Act was enacted to prohibit and protect persons from unfair, deceptive, fraudulent or unconscionable conduct.

1008. A sale of services enabling Internet access constitutes “merchandise” within the meaning of the Ohio Consumer Sales Practices Act.

1009. In failing to inform Plaintiffs and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiffs and the Subclass of a material fact in connection with the sale of merchandise in violation of ORC §1345.02 et seq.

1010. The aforementioned violations of the Consumer Sales Practices Act, have caused Plaintiffs and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1011. Plaintiffs and the Subclass have been forced to hire attorneys to enforce her rights under the Ohio Consumer Sales Practices Act.

**COUNT 151**

**VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**

**INJUNCTIVE RELIEF**

1012. The averments of paragraphs 57-102 are incorporated by reference.

1013. AT&T continues to charge Plaintiffs and the Subclass state and local sales tax on the sale of internet access.

1014. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of ORC §1345.02, as pleaded above.

1015. ORC §1345.09(D) permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

### **COUNT 152**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

1016. The averments of paragraphs 57-102 are incorporated by reference.

1017. Under Ohio law, AT&T may retain .75% of the state sales tax it collects for itself.

1018. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

1019. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

1020. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1021. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

1022. Accordingly, Plaintiffs and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 153**

#### **INJUNCTIVE RELIEF**

1023. The averments of paragraphs 57-102 are incorporated by reference.

1024. AT&T's continued charging of Plaintiffs and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiffs and the Subclass in that Plaintiffs and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1025. Unless enjoined from doing so, AT&T will continue to collect from Plaintiffs and the Subclass state and local sales tax on the sale of internet access.

1026. Plaintiffs and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1027. Plaintiffs and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1028. Plaintiffs and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiffs on behalf of themselves and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiffs and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Ohio Consumer Sales Practices Act, ORC §1345.

C. Disgorgement of all funds collected by AT&T as state and local sales tax of internet access not remitted to the state of Ohio or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, §1345.09(F), or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action, recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **OKLAHOMA**

1029. The averments of paragraphs 57-102 are incorporated by reference.

1030. Plaintiff Jane F. Edmonds, Vicki L. Campbell, Vickie C. Leyj bring this action on behalf of themselves and the Oklahoma Subclass.

1031. Title 68 of the Oklahoma Code, § 1354(A), imposes a sales tax on “telecommunications service”:

There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following: . . . 4. Intrastate, interstate and international telecommunications services sourced to this state in accordance with Section 1354.30 of this title and ancillary services.

1032. Title 68 of the Oklahoma Code, § 1354(A)(4)(a)(6) excludes charges for internet access from sales tax:

“Telecommunications services” do not include: . . . (6) Internet access services.

### **OKLAHOMA SUBCLASS**

1033. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Oklahoma and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Oklahoma Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Oklahoma Subclass."

### **COUNT 154**

#### **BREACH OF CONTRACT**

1034. The averments of paragraphs 57-102 are incorporated by reference.

1035. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiffs and the Subclass sales tax for internet access.

1036. In so doing, AT&T breached its contract with Plaintiffs and the Subclass.

1037. As a result of the breach of contract, Plaintiffs and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiffs and the Subclass.

#### **COUNT 155**

##### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1038. The averments of paragraphs 57-102 are incorporated by reference.

1039. AT&T's breaches of the form Contracts with the Plaintiffs and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiffs and the Subclass, which is imputed into every Contract in Oklahoma under the common law of Oklahoma and the Restatement (Second) of Contracts §205.

1040. AT&T breached its duty of good faith and fair dealing to the Plaintiffs and the Subclass by unfairly charging the Plaintiffs and the Subclass state and local sales tax for internet access.

1041. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiffs and the Subclass economic damages.

#### **COUNT 156**

##### **VIOLATION OF THE OKLAHOMA CONSUMER PROTECTION ACT**

1042. The averments of paragraphs 57-102 are incorporated by reference.

1043. The Oklahoma Consumer Protection Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

1044. A sale of services enabling Internet access constitutes "merchandise" within the meaning of the Oklahoma Consumer Protection Act.

1045. In failing to inform Plaintiffs and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiffs and the Subclass of a material fact in connection with the sale of merchandise in violation of the Oklahoma Consumer Protection Act, 15 O.S. § 751 *et. seq.*

1046. The aforementioned violations of the Oklahoma Consumer Protection Act have caused Plaintiffs and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1047. Plaintiffs and the Subclass have been forced to hire attorneys to enforce their rights under the Oklahoma Consumer Protection Act.

### **COUNT 157**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

1048. The averments of paragraphs 57-102 are incorporated by reference.

1049. Under Oklahoma law, AT&T may retain for itself a percentage of the state sales tax it collects.

1050. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

1051. AT&T collects this amount to the detriment of Plaintiffs and members of the Subclass.

1052. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1053. As a result AT&T is unjustly enriched at the expense of Plaintiffs and the Subclass.

1054. Accordingly, Plaintiffs and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 158**

#### **INJUNCTIVE RELIEF**

1055. The averments of paragraphs 57-102 are incorporated by reference.

1056. AT&T's continued charging of Plaintiffs and the Subclass state and local sales tax on the sale of internet access results in a continuing harm to Plaintiffs and the Subclass in that Plaintiffs and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1057. Unless enjoined from doing so, AT&T will continue to collect from Plaintiffs and the Subclass state and local sales tax on the sale of internet access.

1058. Plaintiffs and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1059. Plaintiffs and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1060. Plaintiffs and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiffs on behalf of themselves and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiffs and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Oklahoma Consumer Protection Act.

C. Disgorgement of all funds collected by AT&T as state and local sales tax on sales of internet access not remitted to the state of Oklahoma or any local taxing authority and return of such funds to the Plaintiffs and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

## **OREGON**

1061. The averments of paragraphs 57-102 are incorporated by reference.

1062. Plaintiff Craig Wellhouser brings this action on behalf of himself and the Oregon Subclass.

1063. Oregon permits municipalities to impose a gross receipts tax on exchange access services. § 221.515 (O.R.S.) Exchange access services do not include internet access services.

1064. Nevertheless, the Oregon cities of Creswell, Eugene, North Plains, Oakridge, Portland, and Wilsonville impose a tax in violation of § 221.515.

**OREGON SUBCLASS**

1065. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Oregon and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Oregon Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The Oregon Subclass.”

**COUNT 159**

**BREACH OF CONTRACT**

1066. The averments of paragraphs 57-102 are incorporated by reference.

1067. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1068. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

**COUNT 160**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1069. The averments of paragraphs 57-102 are incorporated by reference.

1070. AT&T breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Oregon under case law so as to effectuate the reasonable intentions of the parties, and is supported by the Restatement (Second) of Contracts §205.

1071. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1072. In charging the taxes prohibited by law AT&T acted in a manner inconsistent with the justified expectations of the plaintiff.

1073. In charging the taxes prohibited by law, AT&T has effectively denied the Plaintiff the benefits or fruits of the contract.

1074. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **COUNT 161**

#### **UNJUST ENRICHMENT**

1075. The averments of paragraphs 57-102 are incorporated by reference.

1076. Under Oregon law, AT&T may retain a percentage of the state sales tax it collects for itself.

1077. On information and belief, AT&T retains the permitted amount of the state sales tax it collects and thus obtains a legal benefit.

1078. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass and thus appreciates the benefit.

1079. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1080. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass.

1081. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 162**

**VIOLATION OF § 646.608 O.R.S.**

1082. The averments of paragraphs 57-102 are incorporated by reference.

1083. The Oregon Unlawful Trade Practices Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

1084. A sale of services enabling Internet access constitutes “merchandise” within the meaning of §§ 646.605, 646.608 O.R.S.

1085. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of § 646.608 O.R.S.

1086. The aforementioned violations of the § 646.608 O.R.S. have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1087. Plaintiff has been forced to hire attorneys to enforce her rights under the Unlawful Trade Practices Act.

**COUNT 163**

**VIOLATION OF § 646.608 O.R.S.**

**INJUNCTIVE RELIEF**

1088. The averments of paragraphs 57-102 are incorporated by reference.

1089. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1090. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of § 646.608 O.R.S., as pleaded above.

1091. Section 648.638 O.R.S. permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**PENNSYLVANIA**

1092. The averments of paragraphs 57-102 are incorporated by reference.

1093. Plaintiff Meri Annetti brings this action on behalf of herself and the Pennsylvania Subclass.

1094. Section 7202 of the Pennsylvania Tax Reform Code of 1971 (the "Tax Code"), 72 P.S. § 7202(c), imposes a sales tax on "telecommunications service":

Notwithstanding any other provisions of this article, the tax with respect to telecommunications service within the meaning of clause (m) of section 201<sup>2</sup> of this article shall, except for telegrams paid for in cash at telegraph

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<sup>2</sup> Section 7201(m) defines "tangible personal property."

offices, be computed at the rate of six per cent upon the total amount charged to customers for such services, irrespective of whether such charge is based upon a flat rate or upon a message unit charge, but in no event shall charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate be subject to this tax....

1095. 72 P.S. § 7201(rr) defines “telecommunications services” to exclude charges for internet access from sales tax:

**“Telecommunications service.”** Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication transmissions, such as local, toll, wide-area or any other type of telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

..

(3) Charges for access to the Internet. Access to the Internet does not include any of the following:

(A) The transport over the Internet or any proprietary network using the Internet protocol of telephone calls, facsimile transmissions or other telecommunications traffic to or from end users on the public switched telephone network if the signal sent from or received by an end user is not in an Internet protocol.

(B) Telecommunication services purchased by an Internet service provider to deliver access to the Internet to its customers....

1096. 72 P.S. § 7201(rr) (emphasis in original). See also Section 60.20 of the Pennsylvania Code “(6) Internet access. Service charges associated with the provision of Internet access by an Internet or on-line service provider, including flat rate monthly, installation and hourly charges, are considered enhanced telecommunication charges and are not subject to sales and use tax...” 61 Pa. Code § 60.20.<sup>3</sup>

### **SUBCLASS**

1097. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Pennsylvania and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1

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<sup>3</sup> “Enhanced telecommunication services” include internet access. 61 Pa. Code § 60.20(ii).

Excluded from the Pennsylvania Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Pennsylvania Subclass."

#### **COUNT 164**

#### **BREACH OF CONTRACT**

1098. The averments of paragraphs 57-102 are incorporated by reference.

1099. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1100. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1101. AT&T's breaches of its contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T's covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Pennsylvania under the common law of Pennsylvania and the Restatement (Second) of Contracts §205.

1102. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1103. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 165**

**VIOLATION OF UNFAIR TRADE PRACTICES**

**AND CONSUMER PROTECTION LAW**

1104. The averments of paragraphs 57-102 are incorporated by reference.

1105. The Pennsylvania UTPCPL was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

1106. A sale of services enabling Internet access constitutes “merchandise” within the meaning of the UTPCPL.

1107. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of §§ 201-2 and 201-3 of the UTPCPL.

1108. The aforementioned violations of the UTPCPL have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1109. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the UTPCPL.

**COUNT 166**

**UNJUST ENRICHMENT UNDER STATE LAW**

1110. The averments of paragraphs 57-102 are incorporated by reference.

1111. Under Pennsylvania sales tax guidelines, AT&T may retain 1% of the state sales tax it collects for itself.

1112. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

1113. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

1114. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1115. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

1116. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 167**

#### **INJUNCTIVE RELIEF**

1117. The averments of paragraphs 57-102 are incorporated by reference.

1118. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1119. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1120. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1121. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1122. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of herself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the (state consumer protection law).

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Pennsylvania or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees and all other available damages as permitted by either the common law, Section 201-9.2 of the UTPCPL, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

## **PUERTO RICO**

1123. The averments of paragraphs 57-102 are incorporated by reference.

1124. Plaintiff Gira L. Osorio brings this action on behalf of herself and the Puerto Rico Subclass.

1125. Puerto Rico imposes a sales tax on telecommunications services. Puerto Rican law expressly excludes from telecommunications services sales of internet access.

1126. The term "telecommunications service" shall exclude the following:

(vi) Internet access, including access through digital lines (Digital Subscriber Line or DSL). Internet access charges shall not be considered telecommunications services or any other type of taxable service

Subtitle BB - Sales and Use Tax of Act. No. 120 of October 31, 1994, 37.

## **PUERTO RICO SUBCLASS**

1127. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Puerto Rico and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Puerto Rico Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives,

predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Puerto Rico Subclass."

**COUNT 168**

**BREACH OF CONTRACT**

1128. The averments of paragraphs 57-102 are incorporated by reference.

1129. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1130. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

**COUNT 169**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1131. The averments of paragraphs 57-102 are incorporated by reference.

1132. AT&T breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Puerto Rico under case law so as to effectuate the reasonable intentions of the parties, and is supported by the Restatement (Second) of Contracts §205

1133. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1134. In charging the taxes prohibited by law AT&T acted in a manner inconsistent with the justified expectations of the plaintiff.

1135. In charging the taxes prohibited by law, AT&T has effectively denied the Plaintiff the benefits or fruits of the contract.

1136. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

**COUNT 170**

**UNJUST ENRICHMENT**

**(PLEADED IN THE ALTERNATIVE)**

1137. The averments of paragraphs 57-102 are incorporated by reference.

1138. In the alternative to the causes of action pled, Plaintiff and the Subclass aver that under Puerto Rico law, AT&T may retain a percentage of the state sales tax it collects for itself. On information and belief, AT&T retains the permitted amount of the state sales tax it collects and thus obtains a legal benefit.

1139. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass and thus appreciates the benefit.

1140. AT&T is enriched by the funds it collects and retains. Plaintiff and the Subclass are impoverished by the amount retained by AT&T and not paid to the taxing authority of Puerto Rico.

1141. There is a relationship between the enrichment and the impoverishments set out above in that they arise from the wrongful collection of taxes prohibited by federal law.

1142. There is no justification for collection of taxes that may not lawfully be imposed, and AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1143. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass and plaintiff is without a remedy other than through unjust enrichment.

1144. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 171**

#### **VIOLATION OF 23 L.P.R.A. § 1014**

1145. The averments of paragraphs 57-102 are incorporated by reference.

1146. The Puerto Rico Misleading Advertising Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

1147. A sale of services enabling Internet access constitutes “merchandise” within the meaning of 23 L.P.R.A. § 1014.

1148. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of 23 L.P.R.A. § 1014.

1149. The aforementioned violations of the 23 L.P.R.A. § 1014 have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1150. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Consumer Protection Act.

**COUNT 172**

**VIOLATION OF 23 L.P.R.A. 1014**

**INJUNCTIVE RELIEF**

1151. The averments of paragraphs 57-102 are incorporated by reference.

1152. AT&T continues to charge Plaintiff state and local sales tax on the sale of internet access.

1153. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of § 23 L.P.R.A.1014., as pleaded in Count III.

1154. The common law permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **RHODE ISLAND**

1155. The averments of paragraphs 57-102 are incorporated by reference.

1156. Plaintiff James Shirley brings this action on behalf of himself and the Rhode Island Subclass.

1157. Rhode Island General Laws Sections 44-18-7 and -18, impose a sales tax on “telecommunications service”:

**§ 44-18-18 Sales tax imposed.** – A tax is imposed upon sales at retail in this state

...

**§ 44-18-7 Sales defined.** – "Sales" means and includes:

....

(9) The furnishing for consideration of intrastate, interstate and international telecommunications service sourced in this state in accordance with subsections 44-18.1(15) and (16) and all ancillary services, any maintenance services of

telecommunication equipment other than as provided for in subdivision 44-18-12(b)(ii).

1158. Rhode Island General Laws Section 44-18-7.1(y)(i)(G)(6), defines “telecommunications services” to exclude charges for internet access from sales tax:

**§ 44-18-7.1 Additional definitions.**

....

(y) "Telecommunications" tax base/exemption terms:

(i) Telecommunication terms shall be defined as follows:

....

(G) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. "Telecommunications service" does not include:

....

(6) Internet access service;

**RHODE ISLAND SUBCLASS**

1159. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Rhode Island and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Rhode Island Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Rhode Island Subclass."

**COUNT 173**

**BREACH OF CONTRACT**

1160. The averments of paragraphs 57-102 are incorporated by reference.

1161. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1162. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1163. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

#### **COUNT 174**

##### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1164. The averments of paragraphs 57-102 are incorporated by reference.

1165. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Rhode Island under the common law of Rhode Island and the Restatement (Second) of Contracts §205.

1166. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1167. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

#### **COUNT 175**

##### **VIOLATION OF RHODE ISLAND'S DECEPTIVE TRADE PRACTICES ACT**

1168. The averments of paragraphs 57-102 are incorporated by reference.

1169. The Rhode Island Deceptive Trade Practices Act was enacted to prohibit "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce". R.I. Gen. Laws §6-13.1-2.

1170. A sale of services enabling Internet access constitutes “trade” and “commerce” within the meaning of the Rhode Island Deceptive Trade Practices Act. R.I. Gen Laws §6-13.1-1(5).

1171. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with its conduct of “trade” and/or “commerce” in violation of R.I. Gen. Laws §6-13.1-2.

1172. The aforementioned violations of the Rhode Island Deceptive Trade Practices Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1173. Plaintiff has been forced to hire attorneys to enforce his rights under the Rhode Island Deceptive Trade Practices Act.

### **COUNT 176**

### **VIOLATION OF RHODE ISLAND’S DECEPTIVE TRADE PRACTICES ACT**

### **INJUNCTIVE RELIEF**

1174. The averments of paragraphs 57-102 are incorporated by reference.

1175. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1176. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of R.I. Gen. Laws §6-13.1-2, as pleaded in Count III.

1177. R.I. Gen. Laws §6-13.1-5.2 permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**COUNT 177**

**INJUNCTIVE RELIEF**

1178. The averments of paragraphs 57-102 are incorporated by reference.

1179. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1180. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1181. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1182. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1183. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of himself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Rhode Island Deceptive Trade Practice Act.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

D. Attorneys fees as permitted by the common law and/or R.I. Gen. Laws §6-13.1-5.2(d) and/or equity.

E. Prejudgment interest in the statutory amount.

F. All costs of this action recovery for which is permitted by law.

G. Such other and further relief as the Court deems proper.

### **SOUTH CAROLINA**

1184. The averments of paragraphs 57-102 are incorporated by reference.

1185. Plaintiff Eric Bosse brings this action on behalf of himself and the South Carolina Subclass.

1186. South Carolina imposes a 5% sales tax on gross sales of mobile communications services, S.C. Code Ann. Section 12-36-910(B)(3).

1187. South Carolina counties and cities also impose sales tax on gross sales of mobile communications services, such local taxes ranging from 1% to 2.5% of gross sales.

1188. South Carolina law provides exemption from sales tax where “the State is prohibited from taxing by the Constitution or laws of the United States of America or by the Constitution or laws of this State.” S.C. Code Ann. Section 12-36-2120.

**SOUTH CAROLINA SUBCLASS**

1189. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in South Carolina and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the South Carolina Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility’s employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, “The South Carolina Subclass.”

**COUNT 178**

**BREACH OF CONTRACT**

1190. The averments of paragraphs 57-102 are incorporated by reference.

1191. Despite the Internet Tax Freedom Act's prohibition on the imposition of state and local taxes on internet access, AT&T charged Plaintiff and the Subclass state and local sales tax for internet access.

1192. In so doing, AT&T breached its contract with Plaintiff (and its contracts with the Subclass).

1193. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

#### **COUNT 179**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1194. The averments of paragraphs 57-102 are incorporated by reference.

1195. AT&T entered into a written contract with Plaintiff and members of the Subclass. The common law of South Carolina implies a covenant of good faith and fair dealing into this contract.

1196. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by charging the Plaintiff and the Subclass, unfairly and in violation of the Internet Tax Freedom Act, state and local sales tax for internet access.

1197. The abovementioned breaches of contract and of the covenant of good faith and fair dealing have caused damages to the Plaintiff and to the Subclass.

#### **COUNT 170**

#### **INJUNCTIVE RELIEF**

1198. The averments of paragraphs 57-102 are incorporated by reference.

1199. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect.

1200. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1201. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1202. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1203. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff, on behalf of himself and the Subclass, requests a trial by jury and seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

C. Attorneys fees as permitted by law.

D. Prejudgment interest in the statutory amount.

- E. All costs of this action recovery for which is permitted by law.
- F. Such other and further relief as the Court deems proper.

**TENNESSEE**

1204. The averments of paragraphs 57-102 are incorporated by reference.

1205. Plaintiff Robert Wilhite brings this action on behalf of himself and the Tennessee Subclass.

1206. Tenn. Code Ann. § 67-6-101 et seq., imposes a sales tax of 6 percent on “telecommunications services.”

1207. Additionally, local governments within Tennessee have the discretion to levy a Local Communications Services Tax, which is set by ordinance and varies by county and municipality. Tenn. Code Ann. § 67-6-102 (93)(B).

1208. Tenn. Code Ann. § 67-6-102 (93)(B), defines “telecommunications services” to exclude “Internet access service”

**TENNESSEE SUBCLASS**

1209. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Tennessee and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Tennessee Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Tennessee Subclass."

### **COUNT 171**

#### **BREACH OF CONTRACT**

1210. The averments of paragraphs 57-102 are incorporated by reference.

1211. Despite the Internet Tax Freedom Act's prohibition on state and local governments imposing taxes on internet access, and Tennessee's law prohibiting the same, AT&T charged Plaintiff and the Subclass purported "taxes" for wireless internet access.

1212. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1213. As a direct and proximate result of AT&T's breach of contract, Plaintiff and the Subclass were damaged in the amount of purported "taxes" charged by AT&T for internet access, together with interest on the money that AT&T has wrongly charged Plaintiff and the Subclass.

1214. As a direct and proximate result of AT&T's breach of contract, Plaintiff was obligated to retain attorneys to represent her interests in this matter.

1215. Any and all conditions precedent to bringing this action have been met or waived.

### **COUNT 172**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1216. The averments of paragraphs 57-102 are incorporated by reference.

1217. AT&T owed Plaintiff and the Subclass a duty to perform its obligations under the terms of its form Contracts in good faith.

1218. AT&T's breaches of the form Contracts with Plaintiff and the Subclass, as alleged above, also constitute breaches of the covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every contract in Tennessee under the common law of Tennessee and the Restatement (Second) of Contracts §205.

1219. AT&T breached its duty of good faith and fair dealing to Plaintiff and the Subclass by unfairly charging Plaintiff and the Subclass purported "taxes" for internet access.

1220. As a direct and proximate cause of AT&T's breach of its good faith obligations, Plaintiff and the Subclass were damaged in the amount of purported "taxes" charged by AT&T for internet access, together with interest on the money that AT&T has wrongly charged Plaintiff and the Subclass.

1221. As a direct and proximate result of AT&T's breach of its good faith obligations, Plaintiff was obligated to retain attorneys to represent his interests in this matter.

1222. Any and all conditions precedent to bringing this action have been met or waived.

### **COUNT 173**

#### **UNJUST ENRICHMENT UNDER STATE LAW**

1223. The averments of paragraphs 57-102 are incorporated by reference.

1224. Under Tennessee law, AT&T may retain a portion of the purported "taxes" it collects as an administrative collection fee.

1225. On information and belief, AT&T has retained and continues to retain a portion of the amounts it collects as purported "taxes" for internet access.

1226. AT&T collects and keeps these amounts to the detriment of Plaintiff and members of the Subclass.

1227. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1228. As a result AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

1229. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

1230. As a direct and proximate result of AT&T's unjust enrichment, Plaintiff was obligated to retain attorneys to represent his interests in this matter.

1231. Any and all conditions precedent to bringing this action have been met or waived.

#### **COUNT 174**

#### **INJUNCTIVE RELIEF**

1232. The averments of paragraphs 57-102 are incorporated by reference.

1233. AT&T's continued charging of Plaintiff and the Subclass purported state and local "taxes" on internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1234. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass purported state and local "taxes" on internet access.

1235. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address purported state and local "taxes" that AT&T has already collected on internet

access but cannot address AT&T's ongoing collection of such purported "taxes" in violation of the law.

1236. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such purported "taxes."

1237. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying purported state and local "taxes" on internet access absent this Court's order enjoining AT&T from the collection of such "taxes."

WHEREFORE, Plaintiff on behalf of himself and the Subclass seek the following relief:

A. Damages in the amount of purported state and local "taxes" illegally charged by AT&T for internet access services caused by AT&T's breach of contract and/or breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of purported state and local "taxes" improperly charged by AT&T for internet access services in violation of Tennessee law.

C. Disgorgement of all funds collected by AT&T as purported state and local "taxes" for internet access not remitted to the State of Tennessee or any local taxing authority and return of such funds to Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of purported state and local "taxes" for internet access.

E. Attorneys' fees as permitted by common law, statute, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action, recovery for which is permitted by law.

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

## **TEXAS**

1238. The averments of paragraphs 57-102 are incorporated by reference.

1239. Plaintiff Harvey Corn and Pam Corn bring this action on behalf of themselves and the Texas Subclass.

1240. Section 151.051 of the Texas Tax Code imposes a sales tax on a “taxable item” in Texas. Under §151.010 a taxable item is defined as a “taxable service” and under §151.0101 a taxable service is defined to include “internet access.” The term “internet access service” is further defined in §151.00394 to mean “a service that enables users to access content, information, electronic mail, or other services offered over the Internet ...”

1241. Section 151.325 of the Texas Tax Code exempts charges for “an amount not to exceed the first \$25 of a monthly charge.”

## **TEXAS SUBCLASS**

1242. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Texas and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Texas Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility’s legal representatives, predecessors,

successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Texas Subclass."

**COUNT 175**

**BREACH OF CONTRACT**

1243. The averments of paragraphs 57-102 are incorporated by reference.

1244. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, and the exemption provided by state law, AT&T charged Plaintiffs and the Subclass sales tax for internet access.

1245. In so doing, AT&T breached its contract with Plaintiffs and the Subclass.

1246. As a result of the breach of contract, Plaintiffs and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiffs and the Subclass.

**COUNT 176**

**DECLARATORY RELIEF**

1247. The averments of paragraphs 57-102 are incorporated by reference.

1248. Under §28 U.S.C. 2201, Plaintiffs and the Subclass ask this court to declare their rights and status under the statutes which deem the sale for internet access to be exempt from sales tax each month. Plaintiffs and the Subclass are under contract to purchase internet access from AT&T and, as such, are interested persons.

**COUNT 177**

**UNJUST ENRICHMENT UNDER STATE LAW**

1249. The averments of paragraphs 57-102 are incorporated by reference.

1250. Under Texas law and the law in other states, AT&T may retain a percentage of the state sales tax it collects for itself.

1251. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

1252. AT&T collects this amount to the detriment of Plaintiffs and members of the Subclass.

1253. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1254. As a result AT&T is unjustly enriched at the expense of Plaintiffs and the Subclass.

1255. Accordingly, Plaintiffs and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

### **COUNT 178**

### **INJUNCTIVE RELIEF**

1256. The averments of paragraphs 57-102 are incorporated by reference.

1257. AT&T's continued charging of Plaintiffs and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiffs and the Subclass in that Plaintiffs and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1258. Unless enjoined from doing so, AT&T will continue to collect from Plaintiffs and the Subclass state and local sales tax on the sale of internet access.

1259. Plaintiffs and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1260. Plaintiffs and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1261. Plaintiffs and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiffs on behalf of themselves and the Subclass seek the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and unjust enrichment.

B. Disgorgement of all funds collected by AT&T as sales tax on internet access fees that were not remitted to the states and other taxing authorities and return of such funds to the Plaintiffs and members of the Subclass.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

D. Attorneys fees as permitted by either the common law, §28 U.S.C. 2201, or equity.

E. Prejudgment interest in the statutory amount.

F. All costs of this action for which recovery is permitted by law.

G. Such other and further relief as the Court deems proper.

## **UTAH**

1262. The averments of paragraphs 57-102 are incorporated by reference.

1263. Plaintiff Steven A. Devore brings this action on behalf of himself and the Utah Subclass.

1264. Utah Code Ann. §59-12-103, imposes a sales tax on “telecommunications service”:

“A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions: telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; mobile telecommunications service that originate and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act. 4 U.S.C. Sec. 116 et seq.” 1B1&2

1265. Utah Code Ann. §§59-12-102 & 103 define “telecommunications service” to exclude charges for internet access from sales tax. Utah Code Ann. § 59-12-102(113)(c)(vi), (viii); see also Private Letter Ruling 08-005 issued by the Utah State Tax Commission which states in part that: “The Commission finds that the specific items relating to Internet access . . . are not subject to state or local sales, gross receipts, or municipal fees . . .” PLR 08-005 at page 7.

## **UTAH SUBCLASS**

1266. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Utah and who were charged Internet Taxes on bills issued from November 1, 2005 through

[the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Utah Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Utah Subclass."

#### **COUNT 179**

#### **BREACH OF CONTRACT**

1267. The averments of paragraphs 57-102 are incorporated by reference.

1268. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1269. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1270. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

#### **COUNT 180**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1271. The averments of paragraphs 57-102 are incorporated by reference.

1272. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Utah under the common law of Utah and the Restatement (Second) of Contracts §205.

1273. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1274. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 181**

### **INJUNCTIVE RELIEF**

1275. The averments of paragraphs 57-102 are incorporated by reference.

1276. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1277. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1278. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1279. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1280. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**COUNT 182**

**UNJUST ENRICHMENT UNDER STATE LAW**

1281. The averments of paragraphs 57-102 are incorporated by reference.

1282. Under Utah Code Ann. §59-12-108, AT&T may retain at least 1.31% of the state sales tax it collects for itself.

1283. On information and belief, AT&T retains the permitted amount of the state sales tax it collects.

1284. AT&T collects this amount to the detriment of Plaintiff and members of the Subclass.

1285. AT&T thus retains funds that in good conscience and equity it should not be entitled to retain.

1286. As a result, AT&T is unjustly enriched at the expense of Plaintiff and the Subclass.

1287. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

WHEREFORE, Plaintiff on behalf of himself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Utah or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

D. Attorney's fees as permitted by either the common law, or equity.

E. Prejudgment interest in the statutory amount.

F. All costs of this action recovery for which is permitted by law.

G. Such other and further relief as the Court deems proper.

### **VERMONT**

1288. The averments of paragraphs 57-102 are incorporated by reference.

1289. Plaintiff William J. Rogers brings this action on behalf of himself and the Vermont Subclass.

1290. The State of Vermont imposes a sales tax on "telecommunications service" pursuant to 32 V.S.A. § 9771(5).

### **VERMONT SUBCLASS**

1291. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Vermont and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing stem changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Vermont Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Vermont Subclass."

### **COUNT 183**

#### **BREACH OF CONTRACT**

1292. The averments of paragraphs 57-102 are incorporated by reference.

1293. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1294. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1295. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 184**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1296. The averments of paragraphs 57-102 are incorporated by reference.

1297. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every contract in Vermont under the common law of Vermont and the Restatement (Second) of Contracts, § 205.

1298. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Vermont state and local sales tax for internet access.

1299. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 185**

#### **VIOLATION OF VERMONT CONSUMER FRAUD STATUTE**

1300. The averments of paragraphs 57-102 are incorporated by reference.

1301. The Vermont Consumer Fraud Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

1302. A sale of services enabling Internet access constitutes merchandise within the meaning of the Vermont Consumer Fraud Act.

1303. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of Vermont law.

1304. The aforementioned violations of the Vermont Consumer Fraud Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1305. Plaintiff has been forced to hire attorneys to enforce his rights under the Vermont Consumer Fraud Act.

**COUNT 186**

**VIOLATION OF VERMONT CONSUMER FRAUD ACT**

**INJUNCTIVE RELIEF**

1306. The averments of paragraphs 57-102 are incorporated by reference.

1307. AT&T continues to charge Plaintiff state and local sales tax on the sale of internet access.

1308. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of Vermont law, as pleaded in Count III.

1309. Vermont law permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

**COUNT 187**

**INJUNCTIVE RELIEF**

1310. The averments of paragraphs 57-102 are incorporated by reference.

1311. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1312. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Vermont state and local sales tax on the sale of internet access.

1313. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1314. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1315. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

WHEREFORE, Plaintiff on behalf of himself and the Subclass seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the Vermont Consumer Fraud Act.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state of Vermont or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, 12 V.S.A. § 2461(b) or equity.

F. Prejudgment interest in the statutory amount of 12%.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

## **VIRGINIA**

1316. The averments of paragraphs 57-102 are incorporated by reference.

1317. Plaintiff James K.S. Stewart brings this action on behalf of himself and the Virginia Subclass.

1318. Va. Code §58.1-648 imposes a 5% sales tax on “communications services”:  
“Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind im-posed by law, a sales or use tax on the customers of communications services in the amount of 5% of the sales price of each communications service that is sourced to the Commonwealth in accordance with [Va. Code ]§ 58.1-649.”

1319. Va. Code §58.1-648C exempts the following “communications services” from sales tax:

(i) information services . . . (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission.

## **VIRGINIA SUBCLASS**

1320. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Virginia and who were charged Internet Taxes on bills issued from November 1, 2005

through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Virginia Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Virginia Subclass."

#### **COUNT 188**

#### **BREACH OF CONTRACT**

1321. The averments of paragraphs 57-102 are incorporated by reference.

1322. Despite the prohibition by state law and the Internet Tax Freedom Act on the imposition of state and local taxes on internet access, AT&T charged Plaintiff and the Subclass state and local sales tax for internet access.

1323. In so doing, AT&T breached its contract with Plaintiff (and its contracts with the Subclass).

1324. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

**COUNT 189**

**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1325. The averments of paragraphs 57-102 are incorporated by reference.

1326. AT&T entered into a written contract with Plaintiff and members of the Subclass. The common law of Virginia implies a covenant of good faith and fair dealing into this contract.

1327. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by charging the Plaintiff and the Subclass, unfairly and in violation of the Internet Tax Freedom Act, state and local sales tax for internet access.

1328. The abovementioned breaches of contract and of the covenant of good faith and fair dealing have caused damages to the Plaintiff and to the Subclass.

**COUNT 190**

**INJUNCTIVE RELIEF**

1329. The averments of paragraphs 57-102 are incorporated by reference.

1330. AT&T's continued charging of Plaintiff and the Subclass of state and local sales tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect.

1331. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1332. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local sales tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1333. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1334. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local sales taxes on the sale of internet access absent this Court's order enjoining AT&T from the collection of such taxes.

**COUNT 191**

**VIOILATION OF VIRGINIA CONSUMER PROTECTION ACT**

1335. The averments of paragraphs 57-102 are incorporated by reference.

1336. The Virginia Consumer Protection Act ("VCPA") was enacted "to promote fair and ethical standards of dealings between suppliers and members of the consuming public."

1337. AT&T is a "supplier" as that term is defined in Section 59.1-198 of the VCPA and is therefore subject to the provisions of the VCPA.

1338. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of services in violation of §59.1-200 of the VCPA.

1339. The aforementioned violations of the VCPA have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1340. Plaintiff has been forced to hire attorneys to enforce his rights under the VCPA and seeks all damages available under the VCPA, including attorney fees.

WHEREFORE, Plaintiff, on behalf of himself and the Subclass, requests a trial by jury and seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

C. Attorneys fees as permitted by law.

D. Prejudgment interest in the statutory amount.

E. All costs of this action recovery for which is permitted by law.

F. Such other and further relief as the Court deems proper.

### **WASHINGTON**

1341. The averments of paragraphs 57-102 are incorporated by reference.

1342. Plaintiff Matthew J. Vickery brings this action on behalf of himself and the Washington Subclass.

1343. RCW ch. 82.04 imposes an excise tax on “telecommunications service,” as defined in RCW 82.04.065(27). However, the statute expressly excludes “internet access service” from the definition of “telecommunications service.” RCW 82.04.65(27)(c).

### **WASHINGTON SUBCLASS**

1344. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Washington and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T

Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Washington Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Washington Subclass."

### **COUNT 192**

#### **BREACH OF CONTRACT**

1345. The averments of paragraphs 57-102 are incorporated by reference.

1346. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff tax for internet access.

1347. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1348. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

### **COUNT 193**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1349. The averments of paragraphs 57-102 are incorporated by reference.

1350. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T's covenant of good faith and fair dealing to the

Plaintiff and the Subclass, which is imputed into every contract in Washington under the common law of Washington and the Restatement (Second) of Contracts §205.

1351. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local taxes for internet access.

1352. AT&T's breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

#### **COUNT 194**

#### **VIOLATION OF WASHINGTON STATE CONSUMER PROTECTION ACT**

1353. The averments of paragraphs 57-102 are incorporated by reference.

1354. The Washington State Consumer Protection Act was enacted to prohibit, and protect persons from unfair or deceptive acts or practices in the conduct of any trade or commerce. RCW 19.86.020.

1355. A sale of services enabling internet access constitutes "trade" or "commerce" within the meaning of the Washington State Consumer Protection Act.

1356. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, and in charging such taxes, AT&T violated RCW 19.86.020.

1357. AT&T's violations of the Washington State Consumer Protection Act have caused Plaintiff and the Subclass substantial damages.

1358. Plaintiff and the Subclass are entitled to injunctive relief, as well as to recover their actual damages, attorneys' fees, costs of suit, and treble damages, pursuant to RCW 19.86.090.

**COUNT 195**

**INJUNCTIVE RELIEF**

1359. The averments of paragraphs 57-102 are incorporated by reference.

1360. AT&T's continued charging of Plaintiff and the Subclass of state and local tax on the sale of internet access results in a continuing harm to Plaintiff and the Subclass in that Plaintiff and the Subclass must pay additional sums of money on a monthly basis that AT&T has no legal right to collect from them.

1361. Unless enjoined from doing so, AT&T will continue to collect from Plaintiff and the Subclass state and local tax on the sale of internet access.

1362. Plaintiff and the Subclass have no adequate remedy at law in that damages can only address state and local tax that AT&T has already collected on the sale of internet access but cannot address AT&T's ongoing collection of such taxes in violation of the law.

1363. Plaintiff and the Subclass have no adequate remedy at law to stop the collection of such taxes.

1364. Plaintiff and the Subclass seek injunctive relief to relieve them of the continuing and ongoing burden of paying state and local taxes on the sale of internet access.

WHEREFORE, Plaintiff on behalf of himself and the Subclass of all others similarly situated seeks the following relief:

A. Damages in the amount of state and local tax improperly charged by AT&T on sales of internet access for breach of contract and for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local tax improperly charged by AT&T on sales of internet access in violation of the Washington State Consumer Protection Act, including treble damages as provided by statute.

C. Disgorgement of all funds collected by AT&T as state and local taxes of internet access not remitted to the State of Washington or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local tax on sales of internet access.

E. An award of plaintiff's reasonable attorneys' fees.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

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

### **WEST VIRGINIA**

1365. The averments of paragraphs 57-102 are incorporated by reference.

1366. Plaintiff Jill Murphy brings this action on behalf of herself and the West Virginia Subclass.

### **WEST VIRGINIA SUBCLASS**

1367. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in West Virginia and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility

first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the West Virginia Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The West Virginia Subclass."

#### **COUNT 196**

#### **BREACH OF CONTRACT**

1368. The averments of paragraphs 57-102 are incorporated by reference.

1369. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1370. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1371. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access, together with interest on the money which AT&T has wrongly charged Plaintiff and the Subclass.

#### **COUNT 197**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1372. The averments of paragraphs 57-102 are incorporated by reference.

1373. AT&T's breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of AT&T covenant of good faith and fair dealing to the

Plaintiff and the Subclass, which is imputed into every Contract in West Virginia under the common law of West Virginia and the Restatement (Second) of Contracts §205.

1374. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1375. The abovementioned breaches of contract and covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

### **COUNT 198**

#### **WEST VIRGINIA**

#### **VIOLATION OF (STATE CONSUMER PROTECTION ACT)**

1376. The averments of paragraphs 57-102 are incorporated by reference.

1377. The West Virginia Consumer Credit and Protection Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct. § 46A-6-101 W.V.S.A.

1378. A sale of services enabling Internet access constitutes “merchandise” within the meaning of the West Virginia Consumer Credit and Protection Act. § 46A-6-102(4) W.V.S.A.

1379. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of § 46A-6-102(7)(M) W.V.S.A. The aforementioned violations of the West Virginia Consumer Credit and Protection Act have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1380. Plaintiff and the Subclass have been forced to hire attorneys to enforce their rights under the Merchandising Practices Act.

**COUNT 199**

**VIOLATION OF (STATE CONSUMER PROTECTION ACT**

**INJUNCTIVE RELIEF**

1381. The averments of paragraphs 57-102 are incorporated by reference.

1382. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1383. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of § 46A-6-102(7)(M) W.V.S.A., as pleaded in Count III.

1384. Section § 46A-6-106(A) W.V.S.A. permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

### **WYOMING**

1385. The averments of paragraphs 57-102 are incorporated by reference.

1386. Plaintiff Miracles Meyer brings this action on behalf of himself and the Wyoming Subclass.

1387. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of W.S.1977 § 40-12-105, as pleaded in Count III.

### **WYOMING SUBCLASS**

1388. The Consolidated Master Class Action Complaint seeks relief for a subclass of Plaintiffs described as follows:

All persons or entities who are or were customers of AT&T Mobility in Wyoming and who were charged Internet Taxes on bills issued from November 1, 2005 through [the date immediately preceding the date on which AT&T Mobility first issues bill to customers that reflect the billing system changes implemented to cease charging Internet Taxes pursuant to Section 8.1].

Excluded from the Wyoming Subclass are: (i) AT&T Mobility, any entity in which AT&T Mobility has a controlling interest or which has a controlling interest in AT&T Mobility, and AT&T Mobility's legal representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) AT&T Mobility's employees, officers, directors, agents and representatives.

The Subclass shall be known by its state name, "The Wyoming Subclass."

#### **COUNT 200**

#### **BREACH OF CONTRACT**

1389. The averments of paragraphs 57-102 are incorporated by reference.

1390. Despite the prohibition on state and local taxes imposed by the Internet Tax Freedom Act, AT&T charged Plaintiff and the Subclass sales tax for internet access.

1391. In so doing, AT&T breached its contract with Plaintiff and the Subclass.

1392. As a result of the breach of contract, Plaintiff and the Subclass were damaged in the amount of sales tax charged by AT&T for internet access.

#### **COUNT 201**

#### **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

1393. The averments of paragraphs 57-102 are incorporated by reference.

1394. AT&T breaches of the form Contracts with the Plaintiff and the Subclass, as alleged above, also constitute a breach of their good faith and fair dealing to the Plaintiff and the Subclass, which is imputed into every Contract in Wyoming under case law so as to effectuate the reasonable intentions of the parties, and is supported by the Restatement (Second) of Contracts §205.

1395. AT&T breached its duty of good faith and fair dealing to the Plaintiff and the Subclass by unfairly charging the Plaintiff and the Subclass state and local sales tax for internet access.

1396. In charging the taxes prohibited by law AT&T acted in a manner inconsistent with the justified expectations of the plaintiff.

1397. The abovementioned breaches of contract and of the covenant of good faith and fair dealing have caused the Plaintiff and the Subclass economic damages.

## **COUNT 202**

### **UNJUST ENRICHMENT**

1398. The averments of paragraphs 57-102 are incorporated by reference.

1399. Under Wyoming law, AT&T may retain a percentage of the state sales tax it collects for itself.

1400. On information and belief, AT&T retains the permitted amount of the state sales tax it collects. This constitutes the payment of money (or the conferring of a benefit) to AT&T.

1401. AT&T collects the tax amount set forth above to the detriment of Plaintiff and members of the Subclass and thus AT&T appreciates the benefit conferred by payment of these taxes.

1402. Because the taxes are prohibited by law, AT&T retains funds that in good conscience and equity it should not be entitled to retain.

1403. As a result AT&T is unjustly enriched at the expense of the Plaintiff and the Subclass.

1404. AT&T profits from its wrongful conduct in collecting and retaining the taxes.

1405. Accordingly, Plaintiff and the Subclass seek full disgorgement and restitution of the amounts AT&T has retained as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT 203**

**VIOLATION OF W.S.1977 § 40-12-105**

1406. The averments of paragraphs 57-102 are incorporated by reference.

1407. The Wyoming Consumer Protection Act was enacted to prohibit, and protect persons from, deceptive, fraudulent and unfair conduct.

1408. A sale of services enabling Internet access constitutes “merchandise” within the meaning of W.S.1977 § 40-12-105.

1409. In failing to inform Plaintiff and the Subclass that it intended to charge them taxes that were not due and in collecting taxes that were not due, AT&T employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Subclass of a material fact in connection with the sale of merchandise in violation of W.S.1977 § 40-12-105.

1410. The aforementioned violations of W.S.1977 § 40-12-105 have caused Plaintiff and the Subclass substantial and ascertainable loss of money and/or property and other damages.

1411. Plaintiff and the Subclass have been forced to hire attorneys to enforce her rights under the Unlawful Trade Practices Act.

**COUNT 204**

**VIOLATION OF § W.S.1977 § 40-12-105**

**INJUNCTIVE RELIEF**

1412. The averments of paragraphs 57-102 are incorporated by reference.

1413. AT&T continues to charge Plaintiff and the Subclass state and local sales tax on the sale of internet access.

1414. The charging of state and local sales tax on the sale of internet access when no such tax is due is a violation of W.S.1977 § 40-12-105, as pleaded above.

1415. The common law permits the Court to enter injunctive relief to stop AT&T's violations of the law by continuing to charge state and local sales taxes on the sales of internet access.

WHEREFORE, Plaintiff, individually and on behalf of the Subclass, seeks the following relief:

A. Damages in the amount of state and local sales tax improperly charged by AT&T on sales of internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.

B. Damages for Plaintiff and the Subclass in the amount of state and local sales tax improperly charged by AT&T on sales of internet access in violation of the state consumer protection laws.

C. Disgorgement of all funds collected by AT&T as state and local sales tax sales of internet access not remitted to the state or any local taxing authority and return of such funds to the Plaintiff and members of the Subclass.

D. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of internet access.

E. Attorneys fees as permitted by either the common law, state law, or equity.

F. Prejudgment interest in the statutory amount.

G. All costs of this action recovery for which is permitted by law.

H. Such other and further relief as the Court deems proper.

WHEREFORE, on behalf of themselves and the Class and Subclasses they seek to represent, Plaintiffs seek the following relief:

- A. Damages in the amount of “taxes” improperly charged by AT&T on sales of wireless internet access for breach of contract and/or for breach of the covenant of good faith and fair dealing implied in said contract.
- B. Disgorgement of all funds collected by AT&T as state and local sales “taxes” on wireless internet access not remitted to the states or any local taxing authority and return of such funds to the Plaintiffs and members of the Class and Subclasses.
- C. An order of this Court enjoining the collection by AT&T of state and local sales tax on sales of wireless internet access.
- D. Attorneys’ fees as permitted by common law, statute, or equity.
- E. Prejudgment interest in the statutory amount.
- F. All costs of this action recovery for which is permitted by law.
- G. Such other and further relief as the Court deems proper.

Respectfully submitted,

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INTERIM SETTLEMENT CLASS COUNSEL

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon all parties on this 24<sup>th</sup> day of June 2010, via ECF and by mailing a true and accurate copy by first class mail, postage prepaid to all parties that have not established ECF notification.

/s/ Edward D. Robertson, Jr.  
Interim Settlement Class Counsel