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RECEIVED
ALAMEDA COUNTY

JUL 15 2005

By cc lacy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA

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13 Coordination Proceeding Special Title (Rule
14 1550(b))

JCCP No. 4332
Case No. RG03121510

15 **CELLPHONE TERMINATION FEE CASES**

Class Action

17 This Document Relates To:

**SPRINT SPECTRUM L.P. AND
WIRELESSCO L.P.'S ANSWER TO
UNVERIFIED COMPLAINT AND
AFFIRMATIVE DEFENSES**

18 RAMZY AYYAD, JEWELDEAN HULL,
19 CHRISTINE MORTON, RICHARD SAMKO,
20 AMANDA SELBY and KATHERINE ZILL, on
21 Behalf of Themselves and All Others Similarly
22 Situated,

Honorable Ronald M. Sabraw

BY FAX

21 Plaintiffs,

22 vs.

23 SPRINT SPECTRUM, L.P., SPRINT PCS, COX
24 COMMUNICATIONS PCS, WIRELESSCO,
25 L.P. and DOES 1-100,

25 Defendants.

1 Defendants Sprint Spectrum L.P. and Wirelessco L.P. (collectively "Sprint") hereby submit
2 their General Denial and Affirmative Defenses to Plaintiffs' Third Amended Consolidated
3 Complaint ("Complaint").

4 **GENERAL DENIAL**

5 1. Pursuant to Section 431.30 (d) of the Code of Civil Procedure, Sprint generally
6 denies each and every allegation contained in the Complaint, and each purported cause of action
7 thereof, and further denies that any damage, whether in the amount set forth in the Complaint, or
8 in any other sum, or at all, has been caused by reason of any act or omission on the part of Sprint
9 or on the part of its partners, agents, servants or employees.

10 Sprint asserts the following affirmative defenses:

11 **AFFIRMATIVE DEFENSES**

12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Failure to State a Cause of Action)**

14
15 2. The Complaint, and each cause of action and allegation therein, fails to state facts
16 sufficient to constitute a cause of action upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Laches)**

19 3. Plaintiffs have unreasonably delayed in bringing this action to the prejudice of Sprint
20 and is thus barred from bringing this action by the doctrine of laches.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Estoppel)**

23 4. By their conduct, including but not limited to voluntarily paying an ETF, plaintiffs'
24 are estopped from asserting any right to recover on the alleged causes of action in the Complaint.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Unclean Hands)**

27 5. Plaintiffs' recovery against Sprint is barred by the doctrine of unclean hands.

28 ///

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

6. By their conduct, including but not limited to voluntarily paying an ETF, plaintiffs have waived any right to recover on their alleged causes of action.

SIXTH AFFIRMATIVE DEFENSE

(Federal Preemption)

7. Plaintiffs' claims are preempted by the Federal Telecommunications Act, 47 U.S.C. §§ 151 *et seq.*

SEVENTH AFFIRMATIVE DEFENSE

(Primary Jurisdiction)

8. The claims asserted in the Complaint are subject to the primary jurisdiction of the Federal Communications Commission.

EIGHTH AFFIRMATIVE DEFENSE

(Business Justification)

9. The conduct challenged by plaintiffs was justified under the circumstances.

NINTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

10. Plaintiffs claims are barred in whole or in part because they have failed to reasonably mitigate their damages.

TENTH AFFIRMATIVE DEFENSE

(Standing)

11. Plaintiffs, and each of them, lack standing to assert their claims because they have not paid an ETF and/or have not suffered injury sufficient to confer upon them standing under theories upon which they sue.

ELEVENTH AFFIRMATIVE DEFENSE

(Disgorgement Improper Remedy)

12. Plaintiffs' demand for disgorgement of ill gotten revenues and/or profits pursuant to Business & Professions Code sections 17200 *et seq.* exceeds the scope of permissible recovery

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1 under those statutes and thus fails as a matter of law.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 (Business Judgment/Lawful Practice)

4 13. The challenged conduct constitutes a reasonable exercise of business judgment
5 which is not forbidden by law.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 (Statute of Limitations)

8 14. Each and every cause of action of the Complaint is barred by the applicable statute of
9 limitations, including, but not limited to, the limitations periods set forth in California Code of Civil
10 Procedure Sections 337, 338, 339 and 340, California Civil Code Section 1783, and California
11 Business & Professions Code Section 17208.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 (Failure to Mitigate)

14 15. Plaintiffs have failed to take reasonable or adequate steps to mitigate, alter, reduce or
15 otherwise diminish their damages, if any. Plaintiffs are accordingly barred from recovery of any
16 damages that might have been prevented by said mitigation.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 (Ratification/Consent)

19 16. Plaintiffs are barred from asserting this action because they ratified, consented to, and
20 approved the alleged wrongful conduct alleged in the Complaint.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 (Adequate Remedy At Law)

23 17. Plaintiffs' claims for equitable relief, including claims for restitution and
24 injunction, are barred because Plaintiffs have an adequate remedy at law.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Benefits Realized)

27 18. Plaintiffs have enjoyed the benefits of their purchase of the products which are the
28 subject of the Complaint, and are thereby barred from making one or more of the claims for relief

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1 set forth in the Complaint.

2 **EIGHTEENTH AFFIRMATIVE DEFENSE**

3 (Setoff/Offset)

4 19. The Complaint is barred, in whole or in part, by reason of setoff and offset, in that
5 Plaintiffs and/or the persons Plaintiffs purport to represent owe Sprint for damages incurred in
6 connection with any termination of contracts between Sprint and Plaintiffs and/or the persons
7 Plaintiffs purport to represent.

8 **NINETEENTH AFFIRMATIVE DEFENSE**

9 (Arbitration)

10 20. Plaintiffs cannot pursue their claims in this forum because they agreed to arbitrate
11 their claims pursuant to a contractual arbitration provision.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 (Alternate Means of Performance)

14 21. Plaintiffs' claims fail because Sprint's early termination fee is an alternate means of
15 performing contractual obligations and thus is not a liquidated damage provision under Civil Code
16 section 1671.

17 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

18 (Additional Defenses)

19 22. Sprint reserves the right to allege additional defenses as they become known during
20 discovery, and to amend this Answer accordingly.

21 **PRAYER**

22 WHEREFORE, Sprint prays for judgment as follows:

23 1. That Plaintiffs take nothing by the Complaint, and that judgment be entered against
24 Plaintiffs and in favor of Sprint;

25 2. That Sprint be awarded costs of suit incurred in defending this action, including
26 reasonable attorneys' fees; and

27 ///

28 ///

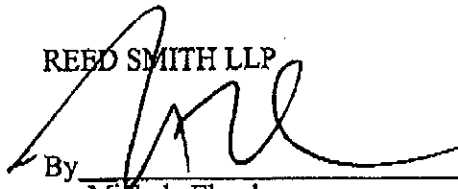
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3. For such other and further relief as the Court may deem just and proper.

DATED: July 15, 2005.

REED SMITH LLP



By

Michele Floyd
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SPRINT SPECTRUM L.P. AND WIRELESSCO
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PROOF OF SERVICE

**Alameda County Superior Court
JCCP Case No. 4332**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, Two Embarcadero Center, Suite 2000, San Francisco, CA 94111. On July 15, 2005, I served the following document(s) by the method indicated below:

SPRINT SPECTRUM L.P. AND WIRELESSCO L.P.'S ANSWER TO UNVERIFIED COMPLAINT AND AFFIRMATIVE DEFENSES

- by transmitting via facsimile on this date from fax number 415.391.8269 the document(s) listed above to the fax number(s) set forth below. The transmitting fax machine complies with Cal.R.Ct 2003(3) AND
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

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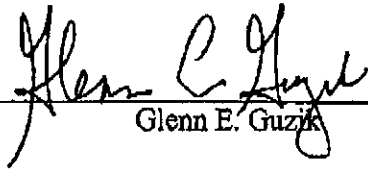
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 15, 2005, at San Francisco, California.



Glenn E. Guzik

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