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11 Attorneys for Defendants and Cross-Complainants
 Nextel of California, Inc., Sprint Spectrum, L.P. and
 12 Wirelesco L.P.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 Coordination Proceeding Special Title
 (Rule 1550(b))

Judicial Counsel Coordination
 Proceeding No. 4332

16 In Re: CELLULAR TERMINATION FEE
 17 CASES

**CROSS-COMPLAINT OF NEXTEL
 OF CALIFORNIA, INC., SPRINT
 SPECTRUM, L.P. AND
 WIRELESSCO, L.P.**

The Honorable Ronald M. Sabraw

19
 20 This document relates to:

Filing Date: June 24, 2005
 Trial Date: None Set

21 NEXTEL OF CALIFORNIA, INC.,
 SPRINT SPECTRUM, L.P. and
 22 WIRELESSCO, L.P.,

23 Cross-Complainant,

24 vs.

25 JEWELDEAN HULL, CHRISTINE
 MORTON, RICHARD SAMKO,
 26 AMANDA SELBY, RAMZY AYYAD,
 and MEMBERS OF THE "ETF PAYER
 27 CLASS"

28 Cross-Defendants.

1 Pursuant to the Court's June 9, 2006 Order Granting Motion of Plaintiffs for
2 Class Certification of an ETF Payer Class, cross-complainants Nextel of California, Inc.,
3 Sprint Spectrum, L.P., and Wirelessco L.P. (collectively "Sprint Nextel"), by and through
4 their undersigned attorneys, hereby cross-complain against cross-defendants Jeweldean
5 Hull, Christine Morton, Richard Samko, Amanda Selby, Ramzy Ayyad, and against all
6 members of the "ETF Payer Class" certified by this Court on June 9, 2006 (collectively
7 "cross-defendants"). Sprint Nextel makes the following allegations based upon
8 information and belief.

9
10 **NATURE OF THE ACTION**

11
12 1. Each cross-defendant alleges that they entered into a Wireless
13 Services Customer Agreement ("Customer Agreement") with one or more of the Sprint
14 Nextel entities for the provision of wireless services. To the extent this is true, each cross-
15 defendant agreed to remain the respective Sprint Nextel entity's customer for a one or two
16 year period from the date they entered into their contract, but each and every cross-
17 defendant retained the option of terminating their obligations under the respective
18 Customer Agreement early in exchange for payment of an early termination fee ("ETF").

19 2. Each cross-defendant alleges that they have paid one or more ETFs ,
20 and/or that they have been charged one or more ETFs. To the extent any cross-defendant
21 paid, or were charged, an ETF, they paid such an ETF, or were charged an ETF, as a result
22 of the exercise of an option to terminate a Customer Agreement prior to the agreed-upon
23 term expiration.

24 3. Cross-defendants have filed suit against one or more Sprint Nextel
25 entities, on behalf of themselves and a putative class of California consumers, in the
26 Superior Court for the State of California, County of Alameda, Judicial Council
27 Coordination Proceeding No. 4332, alleging that one or more Sprint/Nextel entities
28 violated Cal. Civ. Code § 1671(d); Cal. Civ. Code §§ 1750, et seq.; and/or Cal. Bus. and

1 Prof. Code §§ 17200, et seq. They also assert claims for unjust enrichment/common law
2 restitution and a common count for money had and received. Cross-defendants' claims are
3 based on the ETFs they allegedly paid to, or were charged by, one or more Sprint Nextel
4 entities.

5 4. Cross-defendants are part of a certified class which is defined as a
6 class of persons who have paid, or who have been charged, an ETF by one ore more Sprint
7 Nextel Entities.

8 5. According to cross-defendants, the Sprint Nextel ETF provisions are
9 unenforceable because they are either a liquidated damages provision that violates
10 California law, or they are unconscionable contract provisions. Cross-defendants seek,
11 among other things, to have the Court declare that the Sprint Nextel ETFs are void and to
12 order the pertinent Sprint Nextel entities to return any ETFs they collected from cross-
13 defendants. Cross-defendants also seek a declaration that no cross-defendant owes any
14 charged ETF.

15 6. Sprint Nextel filed an answer in which Sprint Nextel generally denies
16 plaintiffs' claims, and Sprint Nextel specifically denies that the ETF is an unlawful
17 liquidated damages provision. Sprint Nextel further and alternatively contends that the
18 ETF constitutes an alternative performance option, under which a subscriber may
19 terminate service before the end of the agreed term in exchange for payment of an ETF. In
20 any event, Sprint Nextel contends that its ETF is valid and enforceable.

21 7. Sprint Nextel further contends that any state law that would invalidate
22 the ETF provisions in Sprint Nextel's Service Agreements is preempted by federal law.

23 8. In the event, and only in the event, that the Court disagrees with
24 Sprint Nextel and determines that: (i) cross-defendants in fact breached their Customer
25 Agreements by terminating early; and/or (ii) that the ETF clause is not a valid alternative
26 performance option, but instead, is a liquidated damages provision that violates California
27 law, or is otherwise unenforceable under California law; and/or (iii) that such California
28 law claims are not federally preempted, then Sprint Nextel brings this cross-complaint to

1 recover the actual damages sustained by Sprint Nextel as a result of cross-defendants' early
2 termination of their respective Customer Agreements.

3
4 **PARTIES**

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6 9. Cross-complainant Nextel of California, Inc. is a Delaware
7 corporation with its primary place of business in Irvine, California.

8 10. Cross-complainant Sprint Spectrum, L.P. is a Delaware partnership
9 and a named defendant in this action.

10 11. Cross-complainant Wirelesco L.P. is a Delaware partnership and a
11 named defendant in this action.

12 12. Cross-defendant Jeweldean Hull ("Hull") is a resident of Toluca Lake,
13 California, and a named class representative in this action making claims against Sprint
14 Nextel.

15 13. Cross-defendant Christine Morton ("Morton") is a resident of San
16 Pablo, California, and a named class representative in this action making claims against
17 Sprint Nextel.

18 14. Cross-defendant Richard Samko ("Samko") is a resident of Burbank,
19 California, and a named class representative in this action making claims against Sprint
20 Nextel.

21 15. Cross-defendant Amanda Selby ("Selby") is a resident of San
22 Francisco, California, and a named class representative in this action making claims
23 against Sprint Nextel.

24 16. Cross-defendant Ramzy Ayyad ("Ayyad") is a resident of Contra Costa
25 County, California and a named class representative in this action making claims against
26 Sprint Nextel.

27 17. Unnamed cross-defendants are members of the "ETF Payer Class" as
28 defined by this Court in its Class Certification Order of June 9, 2006. They (1) had a

1 wireless telephone personal account with one or more Sprint Nextel entities with a
2 California area code and a California billing address, (2) cancelled the account at any time
3 from July 23, 1999 to [class period end date], and (3) were charged an ETF in connection
4 with that cancellation.

5 6 OPERATIVE FACTS 7

8 18. One or more Sprint Nextel entities and each and every named and
9 unnamed cross-defendant class member entered into a Customer Agreement. Pursuant to
10 their Customer Agreements, one or more Sprint Nextel entities agreed to provide wireless
11 services to cross-defendants in exchange for monthly payments to be made by cross-
12 defendants for a specified period of time. Under the Customer Agreements, cross-
13 defendants agreed to maintain their service for a specified period of time, typically either
14 12 or 24 months.

15 19. To the extent cross-defendants paid an ETF to Sprint Nextel, they did
16 so as a result of the termination of service prior to the end of their Customer Agreement
17 period.

18 20. To the extent cross-defendants were charged an ETF, but have not yet
19 paid an ETF, they were charged an ETF because they elected to terminate their Customer
20 Agreement by cancelling their account through any number of means.

21 21. One or more Sprint Nextel entities provided wireless services as
22 required by the particular Customer Agreement into which each cross-defendant entered.

23 22. Sprint Nextel complied with all of the provisions of the Customer
24 Agreements into which each cross-defendant entered.

25 23. The Sprint Nextel entities' Customer Agreements were binding and
26 enforceable.

27 24. In the event the Court determines that the ETF provision in any
28 Customer Agreement to which any or all cross-defendants claim to be a party is void and

1 29. The pertinent Sprint Nextel entities performed all of their duties and
2 obligations under the Customer Agreements, except those excused by cross-defendants'
3 breach in the event the Court determines that any one or more of the cross-defendants
4 breached their Customer Agreement.

5 30. The pertinent Sprint Nextel entities hereby seek all damages directly
6 and proximately suffered.

7
8 **SECOND ALTERNATIVE CAUSE OF ACTION**

9 (Unjust Enrichment, Against All Cross-Defendants)

10
11 31. Sprint Nextel re-alleges and incorporates by reference the allegations
12 contained in Paragraphs 1 through 30 of this Cross-Complaint as if fully set forth herein.

13 32. The Customer Agreement to which each cross-defendant asserts they
14 were a party was valid and enforceable. However, in the event the Court finds that any
15 portion of cross defendants' Customer Agreements are void, or otherwise unenforceable,
16 then cross-defendants are liable to the pertinent Sprint Nextel entities for the benefits they
17 received under the contract.

18 33. If cross-defendants were a party to a Customer Agreement with one or
19 more Sprint Nextel entities, they received certain benefits as consideration for which cross-
20 defendants agreed not to cancel service without either (1) completing a certain period of
21 service with the pertinent Sprint Nextel entities or (2) paying an ETF.

22 34. If cross defendants were a party to Customer Agreements with one or
23 more Sprint Nextel entities and paid an ETF, cross-defendants canceled service without
24 completing the agreed-upon period of service with the pertinent Sprint Nextel entities.

25 35. If cross-defendants are relieved of the obligation to pay the ETF,
26 justice and fairness should not permit them to retain the benefits they received from Sprint
27 Nextel without paying fair compensation for the losses they caused the pertinent Sprint
28 Nextel entities by reason of their early termination of the Customer Agreements.

1 36. Accordingly, if cross-defendants are relieved of the obligation to pay
2 the ETF, they will be unjustly enriched and the amount of the benefits they received should
3 be restored to the pertinent Sprint Nextel entities as restitution.

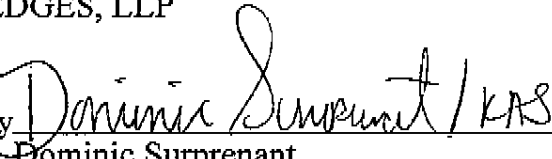
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5 **PRAYER**

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7 WHEREFORE, Sprint Nextel prays for judgment as follows:

- 8 1. For an award of damages against each cross-defendant, including
- 9 incidental and consequential damages, in a specific amount to be proven at trial;
- 10 2. For an award of interest on the above;
- 11 3. For an award of Sprint Nextel's reasonable attorneys' fees and costs
- 12 incurred herein;
- 13 4. If the Sprint Nextel entities' Customer Agreements are held void, for
- 14 an award of restitution of benefits conferred by the pertinent Sprint Nextel entities; and
- 15 5. For such other and further relief as the Court may deem proper.

16 DATED: August 7, 2006

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