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11 Attorneys for Defendants and Cross-Complainants  
Nextel of California, Inc., Sprint Spectrum, L.P. and  
12 Wirelessco 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  
18 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.,  
22 SPRINT SPECTRUM, L.P. and  
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 Wirelessco 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





