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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JENNIFER EOFF, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

SPRINT NEXTEL CORPORATION and
SPRINT SPECTRUM L.P. d/b/a SPRINT
NEXTEL,

Defendants.

Civil Action No.

**COMPLAINT and
DEMAND FOR JURY TRIAL**

Plaintiff Jennifer Eoff (“Plaintiff”), individually and on behalf of the class described below, by her attorneys, makes the following allegations against Sprint Nextel Corporation and Sprint Spectrum L.P. d/b/a Sprint Nextel (together, “Sprint” or “the Sprint Defendants”), pursuant to the investigation of counsel, and upon information and belief, except as to allegations specifically pertaining to Plaintiff, which are based upon personal knowledge:

OVERVIEW OF THE ACTION

1. Plaintiff brings this lawsuit as a proposed class action on behalf of herself and other Sprint customers (1) who purchased Sprint “Everything Messaging” cell phone plans that purportedly provided “Unlimited Messaging (Picture, Text, & Video)” and (2) who were then (wrongfully) charged by Sprint for using their cell phones to send pictures.

2. As alleged herein, Defendants’ conduct gives rise to Plaintiff’s claims for violation of: (1) the Federal Communications Act; (2) violation of the New Jersey Consumer Fraud Act, and substantially similar consumer protection laws of other states; (3) breach of contract; (4) unjust enrichment, and (5) 28 U.S.C. § 2201, a right to declaratory relief

PARTIES/JURISDICTION/VENUE

3. Plaintiff Jennifer Eoff is a citizen of California residing in Ventura, California who was billed for Wrongful Charges, as alleged herein.

4. Defendant Sprint Nextel Corporation is a Kansas corporation with its principal place of business at 2001 Edmund Halley Drive, Reston, Virginia and with local offices at 1 International Boulevard, Suite 800, Mahwah, New Jersey.

5. Defendant Sprint Spectrum L.P. is a Delaware limited partnership with its principal place of business at 6160 Sprint Parkway, Overland, Kansas.

6. Jurisdiction is proper in this Court respect to Plaintiff’s claims arising under the Federal Communications Act pursuant to 28 U.S.C. § 1331. Jurisdiction is proper with respect to Plaintiff’s state law claims under the Court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

7. Jurisdiction is also proper with respect to Plaintiff’s state law claims pursuant to 28 U.S.C. § 1332(d) in that this is a class action involving more than 100 class members where

the amount in controversy exceeds \$5 million, exclusive of interest and costs, and there is at least one class member who is a citizen of a state other than the citizenship of Defendants.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) in that Defendants “reside” in this District.

FACTUAL BACKGROUND
Sprint Cell Phone Plans

9. Sprint is in the business of providing cellular telephone service throughout the nation. It is presently the third largest cellular phone business in the country.

10. It advertises its products and services extensively in New Jersey via print, radio and television. It also maintains an office in New Jersey and has retained lobbyists in New Jersey to represent its interests before governmental bodies in New Jersey.

11. Sprint sells its cell phone services in the form of “plans.” Each of Sprint’s plans specifies what services the Plan includes, and what the customer will be charged for the plan, on a monthly basis.

12. Plaintiff, and the Class defined herein, purchased an “Everything Messaging” cell phone Plan from Sprint.

13. The detailed information on the Sprint website stated that the “Everything Messaging” Plan provided “**Unlimited nationwide, text, picture and video messaging to anyone on any network.**”

14. The Sprint website further stated that the “Everything Messaging” plan provided “**Unlimited Messaging (Picture, Text, & Video).**”

15. Sprint did not put any limitation on the unlimited picture messaging it promised to provide as part of the “Everything Messaging” plan.

16. Nothing on Sprint's website, or any other information published by Sprint, suggested that there was any limitation or further charge for the unlimited picture messaging uniformly promised by the "Everything Messaging" plan.

17. Further, the Terms and Conditions for Sprint's "Everything Messaging" plan did not put any limitation on the uniform promise to provide unlimited picture messaging.

18. Despite the foregoing, Sprint charged Plaintiff and other Class members for picture messaging, contrary to the express terms of the "Everything Messaging" plan they purchased.

19. Sprint customers who purchased the "Everything Messaging" plan expected that the plain language of the plan – unlimited picture messaging – meant exactly what it said.

Sprint Fails to Provide Unlimited Picture Messaging

20. Sprint knew that customers would sign up for its cell phone plans, expecting to pay the agreed-to monthly charge, and expecting to be able to send an unlimited number of pictures using their phones, as the "Everything Messaging" plan specified.

21. Sprint, however, did not allow Plaintiff and the Class to send unlimited number of pictures using their phones. Instead, through a uniform scheme and common course of conduct, Sprint has imposed on Plaintiff and the Class additional charges for sending pictures using their phones, beyond the agreed-to monthly rate provided in their plans. ("Wrongful Charges").

22. In short, Sprint's claim that the Everything Messaging plan provided "**Unlimited nationwide, text, picture and video messaging to anyone on any network**" and "**Unlimited Messaging (Picture, Text, & Video)**" was a bait-and-switch.

Sprint Fails to Respond to Customer Complaints

23. Plaintiff and numerous other Sprint customers complained to Sprint about these Wrongful Charges. Sprint's own website shows many such complaints.

24. Sprint personnel offered various excuses for these Wrongful Charges. For example, Sprint personnel told some customers that they were being charged for "data use." However, the terms of the cell phone plans purchased by Plaintiff and the Class could not be clearer: "Unlimited messaging," including pictures, was what Plaintiff and the class purchased as part of their plan. These Plans made no exceptions for "data use" or for any other reason, and Sprint has no legitimate excuse for imposing the Wrongful Charges.

25. Sprint's Wrongful Charges caused customers' bills to be higher than expected, in some cases substantially higher. For example, Plaintiff was billed at least once an amount more than twice as high as the agreed-to monthly rate due to the Wrongful Charges.

26. Plaintiff is not an isolated disgruntled customer. Plaintiff is but one of many Sprint customers who have been billed for the Wrongful Charges, despite the "unlimited pictures" promise in the Sprint cell phone plan they purchased.

27. Numerous customer complaints on Sprint's own website show that these Wrongful Charges are a widespread problem affecting many Sprint customers. Typical examples of customer complaints from Sprint's website include the following:

- Dec 8, 2008 ... I upgraded my account to the everything messaging shared plan simply due to the unlimited picture mail, text and video ... And to my surprise was charged just for viewing my picture mail ... which I assumed was included in my plan being that it said UNLIMITED PICTURE MAIL ... isn't that false advertisement?
- Jan 2, 2009 ... First time I visited this forum and I'm glad I did as it's obvious that many other Sprint Customers besides myself feel that they have been "bait & switched" by the Everything Messaging Plan and Picture Mail. ... Like everyone else here, I had seen on the internet and was told by the store rep that the plan "includes unlimited texting, pictures and video to anyone on the network."

- Oct 31, 2009 ... We all have an all messaging plan that we were informed that include free picture mail service, yet we have been charged for data for picture mail service, this month \$70 approx on 2 phone on our family account.
- July 17, 2009 ... I'm not happy about spending the extra cash for a data plan (to use picture and video messaging) when originally all we wanted was unlimited text, pic and vid messaging. Also dealing with the aggravation of getting a different story on messaging data charges every time I called Sprint was completely annoying.

28. The large number of complaints on Sprint's own website shows that the Wrongful Charges are a uniform practice of Sprint, impacting all of Sprint's customers who purchased the "Everything Messaging" plan.

**Sprint Actively Conceals its Basis for Adding
Data Charges for Picture Mail Use**

29. Sprint promised the "Everything Messaging" customer "unlimited Picture Mail" while charging many picture mail users for data usage associated with sending picture mail. Despite the fact that Plaintiff and class were charged for data usage in connection with their sending of picture mail, Sprint went out of its way to conceal the basis and justification for these charges.

30. As part of its corporate communications strategy, Sprint monitors message boards and online articles about its products and performance. Sprint engaged in acts of active concealment when it responded to a posting on a website entitled the Consumerist, which had published a post entitled "Sprint's 'Unlimited' Messaging Package Charges You Per Message" dated January 17, 2009. This post quoted an unnamed Sprint representative as saying that Sprint's promise of "Unlimited...picture and video messaging..." means that the customer has the capability to send picture messages, but that the customer cannot actually send them without an additional charge.

31. A Sprint representative responded to this post which was published by The Consumerist in a post entitled “Sprint Clears Up ‘Unlimited Messaging’ Confusion” dated January 20, 2009. The Sprint representative said, “I saw your article on Sprint’s “Everything Messaging” plans. Sprint’s “Everything Messaging” plans include unlimited text, picture and video messaging at no additional charge. **With these plans, there are no charges for data usage associated with using picture or video messaging.**” (Emphasis added.)

32. This public statement by Sprint is false and is an effort to actively conceal the true nature and basis of its business practice. Sprint has charged its customers who purchased the “Everything Messaging” plan for data usage associated with picture messaging. Further, despite this public statement, Sprint has continued to charge customers for data associated with picture messaging.

No Enforceable Agreement To Arbitrate

33. Sprint has inserted clauses into its “terms and conditions” that purport to impose mandatory arbitration and/or waive the right to class action. However, these terms and conditions constitute contracts of adhesion insofar as they are drafted entirely by the Sprint on a take-it-or-leave-it basis in a setting in which disputes between the contracting parties predictably involve small amounts of damages. Plaintiffs had neither the bargaining power nor the ability to change the contractual terms. Sprint relies on purported mandatory arbitration provisions to absolutely shield them from civil liability. In practice, the waivers virtually immunize the defendants from responsibility for their own wrongful conduct. Moreover, even though the clauses may “provide” for payment of attorney fees in arbitration if the claimant is successful, in practice these clauses still prevent consumers from obtaining adequate representation. Such waivers are unconscionable under the law of this Circuit and state laws, and should not be enforced.

34. Similar mandatory arbitration provisions have been held unenforceable. *See Muhammad v. County Bank of Rehoboth Beach*, 189 N.J. 1 (2006); *Hall v. AT&T Mobility*, 608 F.Supp.2d 592 (D.N.J. 2009).

35. On information and belief, Sprint does not use arbitration to resolve their own claims against a customer. Instead, they resolve scores of claims against customers by assigning them to collection agencies who then pursue a variety of means to resolve them, including filing lawsuits, but not arbitration.

CLASS ACTION ALLEGATIONS

A. Definition of the Class

36. Plaintiff brings all claims herein as class claims pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to the Class defined herein, of which Plaintiff is a member:

All Persons who purchased the “Everything Messaging” plan from Sprint and who were charged additional fees, beyond the agreed-to monthly charge, other than applicable taxes, for sending pictures using their phones.

37. The Class may be modified pending discovery. Excluded from the Class are members of the judiciary, Defendants, any entity in which they have a controlling interest, and their officers and directors and the members of their immediate families are excluded.

B. Numerosity

38. At this time, Plaintiffs does not know the exact size of the Class; however, due to the nature of the trade and commerce involved, Plaintiffs believe the Class members are so numerous that joinder of all members is impracticable. The number of class members can be determined through appropriate discovery.

C. Commonality

39. There are questions of law or fact common to the Class, including at least the following:

- (a) Whether the Wrongful Charges are unjust, unreasonable and/or unlawful;
- (b) Whether Sprint's conduct violated the Federal Communications Act;
- (c) Whether Sprint billed the Class for Wrongful Charges;
- (d) Whether Sprint's conduct constitutes deceptive, unfair and/or oppressive conduct;
- (e) Whether Sprint breached its contract with the class;
- (f) Whether Sprint has been unjustly enriched;
- (g) Whether Declaratory Relief is appropriate; and
- (h) Whether Plaintiffs and the Class have been damaged, and if so, the proper measure of such damages.

D. Typicality

40. Plaintiff has the same interests in this matter as all other members of the Class, and her claim is typical of all members of the Class.

E. Adequacy

41. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Plaintiff will fairly and adequately represent the interests of Class members and does not have interests adverse to the Class.

F. The Prerequisites of Rule 23(b)(2) are Satisfied

42. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Sprint has acted or refused to act on grounds

generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

43. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Sprint. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of the Class, who would not be parties to those actions.

44. Sprint's actions are generally applicable to the Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.

45. Sprint's systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

G. The Prerequisites of Rule 23(b)(3) are Satisfied

46. This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class defined above.

COUNT I
**(Violation of § 201 of the Federal Communications Act
against Sprint / Nextel)**

47. Plaintiff repeats the allegations contained in the preceding Paragraphs as if fully set forth herein.

48. At all times relevant hereto there was in full force and effect the Federal Communications Act of 1934 (“FCA”), 47 U.S.C. § 201 *et seq.*

49. This Count is asserted by Plaintiff individually and on behalf of the Class.

50. The Defendants are common carriers engaged in interstate or foreign communication by wire or radio, and subject to the common carrier regulation set forth at 47 U.S.C. § 201, *et seq.*

51. Defendants’ Wrongful Charges, as alleged above, are charges and/or practices in connection with communication service, subject to the requirements of 47 U.S.C. § 201(b).

52. Section 201(b) of the FCA provides that all charges, practices, classifications, and regulations for and in connection with communication service, shall be just and reasonable. 47 U.S.C. § 201(b).

53. The Sprint Defendants’ Wrongful Charges are unjust, unreasonable and/or unlawful under Section 201(b).

54. As a direct and proximate result of the Sprint Defendants’ violation of 47 U.S.C. §§ 201(b) described above, Plaintiff and other Class members have been damaged.

COUNT II
(Violation of the New Jersey Consumer Fraud Act)

55. Plaintiff repeats the allegations of the preceding paragraphs as if fully set forth herein.

56. Plaintiffs bring their statutory fraud claims pursuant to substantially similar consumer fraud acts,¹ all of which were enacted and designed to protect consumers against unfair, deceptive and/or fraudulent business practices. *See, e.g.*, N.J.S.A. § 56:8-1 *et seq.* These Consumer Protection Acts are modeled after the FTC’s consumer protection provisions and are collectively referred to herein as “Consumer Acts.”

57. For example, New Jersey’s Consumer Fraud Act (N.J.S.A. § 56:8-2) provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact . . . whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

58. At all relevant times, Plaintiff, Class members and the Sprint Defendants were “persons” within the meaning of the Consumer Acts, *see e.g.*, N.J.S.A. § 56:8-1.

59. Sprint’s “Everything Messaging” plans are acts or practices in the conduct of trade or commerce.

60. Sprint’s implementation of its “Everything Messaging” plans are unconscionable and/or deceptive in that they were advertised as providing unlimited messaging, whether for text, video or photographs, for one flat rate when, in fact, Sprint consistently charged customers with “Everything Messaging” plans for messages which included photographs.

61. Plaintiff and other Class members suffered ascertainable harm as a result of Sprint’s deceptive and/or unconscionable acts by being forced to pay charges for messaging beyond those which were advertised by Sprint and which they reasonably expected to incur

¹ *See e.g.*, Cal. Bus. & Prof. Code § 17200 *et seq.*; Fla. Stat. Ann. § 501.201 *et seq.*; 815 ILCS § 505/1 *et seq.*; MICH. COMP. LAWS § 445.901, *et seq.*; Mo. Rev. Stat. § 407.010 *et seq.*

based upon Sprint's representations as to the terms and conditions of its "Everything Messaging" plans.

COUNT III
(Violation of the California Unfair Business Practices Act)

62. Plaintiff repeats the allegations of the preceding paragraphs as if fully set forth herein.

63. At all times relevant hereto, there was in full force and effect the California Unfair Business Practices Act ("CUBPA"), California Business and Professions Code § 17200, *et seq.*, which prohibits deceptive, fraudulent and unfair business acts and practices.

64. Plaintiff and Class members are consumers within the meaning of the CUBPA given that the Sprint Defendants' business activities involve trade or commerce, are addressed to the consumer market generally and otherwise implicate consumer protection concerns.

65. The Sprint Defendants intended that Plaintiff and Class would rely on its deception by purchasing cell phone Plans, unaware of the material facts described above, including the imposition of Wrongful Charges. This conduct constitutes consumer fraud, an unfair business practice and violation of the CUBPA.

66. The Sprint Defendants have committed deceptive acts or practices within the meaning of the CUBPA by engaging in the acts and practices alleged herein.

67. The Sprint Defendants' conduct alleged herein is further unfair insofar as it offends public policy; is so oppressive that the consumer has little alternative but to submit; and causes consumers substantial injury.

68. The Sprint Defendants conduct adversely affects the public interest and is a proximate cause of injury and money damages to Plaintiff Class in an amount to be proven at

N.J.S.A. § 56:8-1 *et seq.*; Wash. Rev. Code § 19.86.010 *et seq.*

trial. The Sprint Defendants are liable to Plaintiff Class for all appropriate damages allowed under the law, costs and attorneys' fees, including as private attorney generals under Cal. Code Civ. Proc. §1021.5.

COUNT IV
(Violations of the California Consumers Legal Remedies Act)

69. Plaintiff repeats and realleges the allegations of the preceding paragraphs, as if fully set forth herein.

70. At all times relevant hereto, there was in full force and effect the California Consumers Legal Remedies Act ("CCLRA"), California Civil Code § 1750, *et seq.*, which prohibits certain deceptive, fraudulent and unfair business acts and practices.

71. Plaintiff and Class members are consumers within the meaning of the CCLRA given that the Sprint Defendants' business activities involve trade or commerce, are addressed to the consumer market generally and otherwise implicate consumer protection concerns.

72. The Sprint Defendants intended that Plaintiff and Class would rely on its deception by purchasing cell phone Plans, unaware of the material facts described above, including the imposition of Wrongful Charges. This conduct constitutes consumer fraud, an unfair business practice and violation of the CCLRA

73. The Sprint Defendants have committed deceptive acts or practices within the meaning of the CCLRA by engaging in the acts and practices alleged herein.

74. The foregoing deceptive acts or practices committed by the Sprint Defendants violate California Civil Code § 1770, including, but not limited to, subsections (a)(5), (a)(9) and (a)(14).

75. Under this Count, and pursuant to the CCLRA, Plaintiff seeks injunctive relief, only, in the form of an Order prohibiting the Sprint Defendants from committing the deceptive

acts or practices alleged herein. Plaintiff expressly reserves the right to amend this Complaint to allege additional relief and damages available under the CLRA once the applicable notice period has elapsed. Civil Code §1782 (d)

COUNT V
(Breach of Contract against the Sprint Defendants)

76. Plaintiff repeats the allegations of the preceding paragraphs, as if fully set forth herein.

77. Defendant Sprint uses a form contract for the sale of its cellular telephone services.

78. That form contract, with regard to those who have purchased the “Everything Messaging” Plan, promises that the “Everything Messaging” Plan means “**Unlimited nationwide, text, picture and video messaging to anyone on any network.**”

79. Plaintiff has signed and agreed to be bound by the conscionable terms of that contract.

80. Plaintiff has paid and Sprint has received adequate compensation for providing the Plaintiff the cellular services she contracted for, including the services promised at the price promised for the “Everything Messaging” Plan. That compensation is in the form of the monthly flat fee she is required to pay to received the “Everything Messaging” Plan.

81. Sprint has breached the agreement by charging plaintiff for data usage in connection with her sending of picture messages, even though she had the “Everything Messaging” Plan.

82. Plaintiff has been injured by Sprint’s breach of contract in the form of being billed for charges she was not obligated to pay, and the Plaintiff will continue to incur such charges and damages in the future.

COUNT VI
(Unjust Enrichment against the Sprint Defendants)

83. Plaintiff repeats the allegations of the preceding paragraphs, as if fully set forth herein.

84. Plaintiff and Class have conferred benefits on Sprint Defendant by paying the monthly charges on their cell phone Plans, and by paying some or all of the Wrongful Charges billed to them by the Sprint Defendants.

85. The Sprint Defendants knowingly and willingly accepted these monetary benefits from Plaintiff and Class.

86. Under these circumstances, it is inequitable for the Sprint Defendants to retain these benefits at the expense of Plaintiff and Class.

87. The Sprint Defendants have been unjustly enriched at the expense of and to the detriment of Plaintiff and the Class by collecting the Wrongful Charges to which the Sprint Defendants, in equity, are not entitled.

88. Plaintiff and Class are entitled to recover from the Sprint Defendants all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

89. As a direct and proximate result of the Sprint Defendants' unjust enrichment, Plaintiff and Class have suffered injury and are entitled to reimbursement, restitution and disgorgement from the Sprint Defendants of the benefits conferred by Plaintiff and the Class.

90. Plaintiff and Class have no adequate remedy at law.

91. Plaintiff seeks to obtain a pecuniary benefit for the Class in the form of all reimbursement, restitution and disgorgement from the Sprint Defendants. Plaintiff's counsel are entitled to recover their reasonable attorneys' fees and expenses as a result of the conference

of a pecuniary benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.

92. As a direct and proximate result of the Sprint Defendants' wrongful conduct as set forth above, the Sprint Defendants, has been unjustly enriched.

COUNT VII
(Declaratory Relief Pursuant To 28 U.S.C. § 2201 against Sprint/Nextel)

93. Plaintiff repeats the allegations of the preceding paragraphs, as if fully set forth herein.

94. There is an actual controversy between the Sprint Defendants and Plaintiff and Class concerning any entitlement by the Sprint Defendants to the Wrongful Charges.

95. Pursuant to 28 U.S.C. § 2201 this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

96. Plaintiff and Class are interested parties who seek a declaration of their rights and legal relations vis-à-vis the Sprint Defendants under their cell phone Plans.

97. The Wrongful Charges are not covered by the cell phone Plans which Plaintiff and the Class purchased from the Sprint Defendants.

98. Plaintiff and class members who were billed for the Wrongful Charges, and who paid some or all of the Wrongful Charges to the Sprint Defendants have been damaged because they paid a charge which they were not legally bound to pay.

99. Plaintiff and class members who where billed for the Wrongful Charges, and who did not pay the Wrongful Charges have also had their credit damaged because the Sprint Defendants have reported that a debt is owing from such persons when, in fact, no debt is due and owing.

CERTIFICATION

Pursuant to Local Civ. R. 11.2, the undersigned counsel for Plaintiff hereby certifies that the subject matter of this action is not the subject matter of any other civil action or arbitration proceeding, and that none is contemplated.

CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY & AGNELLO, P.C.
Attorneys for Plaintiff

By: /s/ James E. Cecchi
JAMES E. CECCHI

Dated: March , 2010