

1 Scott Edward Cole, Esq. (S.B. #160744)
Clyde H. Charlton, Esq. (S.B. #127541)
2 Matthew R. Bainer, Esq. (S.B. #220972)
SCOTT COLE & ASSOCIATES, APC
3 1970 Broadway, Suite 950
Oakland, California 94612
4 Telephone: (510) 891-9800
Facsimile: (510) 891-7030
5 web: www.scalaw.com

6 Attorneys for Representative Plaintiff
and the Plaintiff Class

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 TIMOTHY P. RUMBERGER,)
individually, and on behalf of all others)
12 similarly situated.)
13)
Plaintiffs.)
14 vs.)
15 SPRINT COMMUNICATIONS)
COMPANY L.P., and DOES 1 through)
16 25, inclusive.)
17)
Defendants.)
_____)

Case No.: C 05-04050 JSW

CLASS ACTION

**FOURTH AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF AND
RESTITUTION**

18
19 Representative Plaintiff alleges as follows:

20
21 **PRELIMINARY STATEMENT**

22 1. This is a class action, under Code of Civil Procedure § 382, seeking damages, interest
23 thereon, injunctive and other equitable relief and reasonable attorneys' fees and costs on behalf of
24 Representative Plaintiff and all other persons who have purchased pre-paid telephone calling cards
25 (hereinafter referred to as the "Class Members," the "Plaintiff Class") from defendant SPRINT
26 COMMUNICATIONS COMPANY L.P. (hereinafter referred to as "SPRINT" and/or "Defendant")
27 either directly therefrom or indirectly from a distributor or retailer thereof within the State of
28 California at any time since August 24, 2001. The Representative Plaintiff, on behalf of himself and

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

1 the Class Members. also seeks injunctive relief and restitution of all benefits SPRINT has enjoyed
2 from its unlawful and/or deceptive business practices. as detailed herein.

3
4 **INTRODUCTION**

5 **The Pre-Paid Calling Card Industry**

6 2. Pre-paid telephone calling cards (i.e., cards of pre-stated value that represent
7 telephone time purchased in advance at specified rates per minute of usage) advertise service rates
8 far below that achievable through ordinary telephone service subscriptions and often represent the
9 only access to long distance telecommunications for individuals who cannot afford and/or qualify
10 for traditional telephone service. Pre-paid telephone calling cards ("Pre-paid calling cards") are a
11 form of currency for purchases of telecommunications services in which users pay in advance for
12 the right to make toll or local telephone calls and have the payment recorded in an account which
13 is debited as usage occurs.

14 3. Use of Pre-paid calling cards is simple: ordinarily, the user dials a toll-free number
15 appearing on the back of the card at which time the user is then prompted to enter a Personal
16 Identification Number ("PIN"), also appearing on the back of the card. At this point, the user is
17 ordinarily provided a system-generated statement of the remaining card value. Finally, the user is
18 prompted to enter the desired telephone number to be called and, after doing so, is informed of the
19 number of minutes remaining on the card. After entry of the PIN and desired telephone number, the
20 call is placed or the user is informed that the card has no value remaining and/or has expired.

21 4. Pre-paid calling cards are available in various dollar-value increments and may be
22 purchased over the Internet as well as at convenience stores, copy centers, gas stations, drug stores,
23 delicatessens, check cashing facilities, truck stops and newsstands throughout this judicial district,
24 across the State of California and around the world.

25 5. Where retailers sell Pre-paid calling cards, they also ordinarily display
26 advertisements/marketing materials, also provided by the issuer of the particular cards. These
27 advertisements are oftentimes glossy, one- to two-square foot posters which guarantee the consumer
28 a specific number of minutes of call-time available upon purchase of one of various card values.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 6. Representative Plaintiff is informed and believes and, on that basis, alleges that
2 Defendant similarly uses such glossy poster advertisements to entice consumers to purchase its Pre-
3 paid calling cards.

4 7. Since the mid-1990's, Pre-paid calling cards have gone from a niche market for
5 promotional and collectible cards to a multi-billion-dollar industry. Billions of minutes worth of
6 Pre-paid calling card time are sold each year in the United States alone and the numbers are believed
7 to be on the rise.

8
9 **Defendant's Marketing Activity And Products**

10 8. SPRINT is a major provider and marketer of Pre-paid calling cards in the State of
11 California. In marketing Pre-paid calling cards, defendant SPRINT has disseminated or caused to
12 be disseminated to consumers and distributors, through its Internet presence, via point-of-sale
13 materials and/or on the Pre-paid calling cards themselves, a promise that "a U.S. payphone surcharge
14 of \$.50 will apply, or the minute rate equivalent."

15 9. Defendant's non-disclosure of the higher charges associated with its Pre-paid calling
16 cards are of material fact and constitute misrepresentation and unfair, unlawful, fraudulent and/or
17 deceptive business practices in violation of California law. For example, Defendant's false and/or
18 misleading representations, expressly or by implication, that the value of its Pre-paid calling cards
19 are reduced only at the advertised per-minute rate constitutes a deceptive act or practice in violation
20 of California's consumer protection laws, including, but not limited to California Business and
21 Profession Code §§ 17200, et sequitur.

22 10. Indeed, Defendant is obligated by law to accurately and honestly disclose all
23 applicable charges at the point of sale and time of purchase.

24 11. As a result of Defendant's concealment and non-disclosure, customers are misled into
25 purchasing SPRINT's Pre-paid calling cards, unjustly enriching Defendant at the expense of these
26 consumers. Defendant, at all times, knew that Representative Plaintiff and the Class members relied
27 (or should be presumed to have relied) upon the misrepresentations of Defendant. Defendant's
28 concealment, misbranding and non-disclosure were intended to influence consumers' purchasing

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 THE WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 decisions and were done with reckless disregard for the rights of consumers. Representative
2 Plaintiff's and Class members' reliance and resultant substantial monetary loss were reasonably
3 foreseeable by Defendant.

4 12. Absent injunctive relief by this Court, Defendant is likely to continue to injure
5 consumers and harm the public interest. This action is brought to redress and end this pattern of
6 unlawful conduct.

7
8 **JURISDICTION AND VENUE**

9 13. This Court has jurisdiction over Representative Plaintiff's and Class Members'
10 claims for unpaid overtime wages under Code of Civil Procedure § 382; the Unfair Competition Law
11 ("UCL"), Business & Professions Code § 17200 *et seq.*, the False Advertising Law, Business &
12 Professions Code § 17500 *et seq.* ("Section 17500"); and the Consumers Legal Remedies Act
13 ("CLRA"), Civil Code § 1750 *et seq.*

14 14. This Court has jurisdiction over Representative Plaintiff's and Class Members'
15 claims for injunctive relief and restitution of ill-gotten benefits arising from defendant SPRINT's
16 unlawful business practices under Business & Professions Code §§ 17203 and 17204.

17 15. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
18 Procedure § 395(a). Defendant SPRINT transacts business, has agents, and is otherwise within this
19 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a
20 direct effect on Representative Plaintiff and those similarly situated within the State of California
21 and within San Francisco County. Defendant SPRINT distributes and markets the sale of Pre-paid
22 calling cards to class members in San Francisco County.

23 16. Venue is also proper in this Court pursuant to Code of Civil Procedure §§ 395 and
24 395.5, Business and Professions Code §§ 16750(a), 17203, 17204 and 17535, and Civil Code §
25 1780(c) Civil Code § 1781(a) because Defendant either transacts business, has an agent, or is found
26 do business in the County of San Francisco and the Defendant is within the jurisdiction of this Court
27 for purposes of service of process. The acts hereinafter described were carried on, in part, within
28 the State of California and, more particularly, within San Francisco County.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 THE WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 17. Federal court subject matter jurisdiction over this class action and representative
2 action does not exist. The amount in controversy alleged in this Complaint as to the Representative
3 Plaintiff and each member of the Class does not exceed \$75,000, including interest and any award
4 of attorneys' fees and costs. Representative Plaintiff and each member of the Class disclaim any
5 recovery greater than \$75,000 (including compensatory damages, statutory damages, punitive or
6 exemplary damages, and awardable attorneys' fees and costs on a per-plaintiff basis), and
7 specifically limit their total claims to \$75,000 or less for any particular plaintiff/class member.
8 Damages (whether compensatory, statutory, punitive, or exemplary), attorneys' fees and costs may
9 not be aggregated to meet the minimum jurisdictional amount of the federal district courts.

10
11 **PLAINTIFFS**

12 18. The Representative Plaintiff identified herein was and is a natural person and, during
13 the relevant time period identified herein, purchased and used (or attempted to use) SPRINT's Pre-
14 paid calling cards, yet did not receive the full value of the service promised by SPRINT.

15 19. As used throughout this Complaint, the terms "Plaintiff" and/or "Class" refer to the
16 named plaintiff herein as well as each and every person eligible for membership in the Plaintiff
17 Class, as further described and defined below.

18 20. The Plaintiff Class consists, generally, of all persons who purchased, either within
19 the State of California, Pre-paid calling cards from SPRINT at any time during the class period, as
20 identified later in this Complaint, and to whom the value of SPRINT's Pre-paid calling cards, as
21 identified on the reverse side of the cards themselves, was misrepresented by Defendant.

22 21. At all times herein relevant, the Representative Plaintiff was and now is a person
23 within each Class of persons further described and defined herein.

24 22. The Representative Plaintiff brings this action on behalf of himself and as a class
25 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons similarly
26 situated and proximately damaged by the unlawful conduct described herein.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

DEFENDANT

23. At all times herein relevant, defendants SPRINT COMMUNICATIONS COMPANY L.P. and Does 1 through 25, inclusive (collectively referred to as "SPRINT" and/or "Defendant") were limited partnerships, duly licensed and located and doing business in, but not limited to, the County of San Francisco, in the State of California.

24. Those defendants identified as Does 1 through 25, inclusive, are and were, at all relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the remaining defendants.

25. Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants is responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein alleged and that Representative Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

26. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

CLASS ACTION ALLEGATIONS

27. Representative Plaintiff Timothy P. Rumberger brings this action on behalf of himself and as a class action on behalf of all persons or entities similarly situated and proximately damaged by SPRINT's conduct as set forth herein, including, but not necessarily limited to, the following Class:

All persons who purchased, within the State of California, a Pre-paid telephone calling card ("Calling Card") from Sprint Communications Company L.P. at any time during the period of August 24, 2001 to the present (the "Class Period") and to whom SPRINT under-represented its U.S. payphone surcharge.

1 28. Excluded from the class are defendant SPRINT, its officers, directors, parents,
2 predecessors, successors, subsidiaries, units, divisions, and co-conspirators, government entities, and
3 any and all judges and justices assigned to hear any aspect of this case.

4 29. This action has been brought and may properly be maintained as a class action under
5 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
6 and the proposed Class are easily ascertainable.

7 a. Numerosity: A class action is the only available method for the fair and
8 efficient adjudication of this controversy. The members of the Class are so
9 numerous that joinder of all members is impractical, if not impossible,
10 insofar as Representative Plaintiff is informed and believes and, on that basis,
11 alleges that the total membership in each of the Class is in the tens of
12 thousands, if not much greater. Membership in the Class will be determined
13 upon analysis of sales, among other, records maintained by SPRINT.

14 b. Commonality: The Representative Plaintiff and the Class Members share a
15 community of interests in that there are numerous common questions and
16 issues of fact and law which predominate over any questions and issues
17 solely affecting individual members, including, but not necessarily limited
18 to:

- 19 1. whether SPRINT had a duty to Representative Plaintiff and the Class
20 to disclose the true value of its Pre-paid calling cards;
- 21 2. whether the facts concealed by Defendant from Representative
22 Plaintiff and the Class are material facts;
- 23 3. whether Defendant misled consumers by failing to disclose true value
24 of the Pre-paid calling cards purchased by Representative Plaintiff
25 and the class;
- 26 4. whether Defendant engaged in unfair competition or unfair and/or
27 deceptive acts or practices when it represented, through advertising,
28 warranties and other express and implied representations that
Defendant's Pre-paid calling cards had characteristics that they do
not actually have;
5. whether Defendant violated California law, including Business &
Professions Code § 17200, et seq., Business & Professions Code
§ 17500, et seq., the Consumers Legal Remedies Act, California
Civil Code §§ 1750, et seq.,
6. Whether SPRINT committed fraud in concealing from Representative
Plaintiff and the Class the true nature of the actual value of the Pre-
paid calling cards being purchased thereby;

c. Typicality: The Representative Plaintiff's claims are typical of the claims of
the Plaintiff Class. The Representative Plaintiff and all members of the
Plaintiff Class sustained injuries and damages arising out of and caused by
Defendants' common course of conduct in violation of state law, as alleged

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

herein.

d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Class, in that the Representative Plaintiff's claims are typical of those of the Class and the Representative Plaintiff have the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

30. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

31. On numerous occasions during the respective class periods, Representative Plaintiff and/or members of the Plaintiff Class purchased SPRINT's Pre-paid calling cards in reliance on SPRINT's promise that "a U.S. payphone surcharge of \$.50 will apply, or the minute rate equivalent" with respect to usage of its Pre-paid calling cards.

32. Defendant SPRINT disseminated or caused to be disseminated to Representative Plaintiff and the Plaintiff Class this promise on the reverse side of the Pre-paid calling cards themselves, through the Internet, through point-of-sale materials and/or through other advertisements.

33. Despite this representation, these SPRINT Pre-paid calling cards, on many occasions during the class period, in fact charged a surcharge exceeding "\$.50" and/or "the minute rate equivalent."

1 34. By failing to limit "U.S. payphone surcharge[s]." as promised, SPRINT breached its
2 agreements with the Representative Plaintiff and members of the Plaintiff Class.

3 35. As a direct and proximate result of this defendant's breach of these agreements,
4 Representative Plaintiff and the Plaintiff Class are entitled to recover actual damages in an amount
5 to be established at trial.

6
7 **SECOND CAUSE OF ACTION**
8 **FRAUD**

9 36. Representative Plaintiff incorporates in this cause of action each and every allegation
10 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

11 37. The conduct of Defendant constitutes a fraud against Representative Plaintiff and
12 members of the Plaintiff Class. Defendant, directly or through its agents and employees, made false
13 representations to Representative Plaintiff and members of the Class that were likely to deceive
14 Representative Plaintiff and Class members. Representative Plaintiff and the members of the Class
15 were misled by these false representations in purchasing goods and/or services from Defendant
16 and/or entering into agreements with Defendant.

17 38. Through a consistent marketing campaign and identical text on the reverse side of
18 SPRINT's Pre-paid calling cards, among other means of communicating said promise, Defendant,
19 directly and/or indirectly, made substantially-similar, if not identical, misrepresentations to
20 Representative Plaintiff and each member of the Class.

21 39. As a result of Defendant's wrongful conduct, Representative Plaintiff and members
22 of the Plaintiff Class have suffered and continue to suffer economic losses and other general and
23 specific damages, including but not limited to the monies paid to Defendant.

24 40. Moreover, in that at all times herein mentioned, Defendant intended to cause or acted
25 with reckless disregard of the probability of causing damage to Representative Plaintiff and
26 members of the Plaintiff Class, and because Defendant was guilty of Oppressive, Fraudulent and/or
27 Malicious conduct, Representative Plaintiff and members of the Plaintiff Class are entitled to an
28 award of exemplary or punitive damages against Defendant in an amount adequate to deter such

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 THE WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 conduct in the future.

2
3 **THIRD CAUSE OF ACTION**
4 **NEGLIGENT MISREPRESENTATION**

5 41. Representative Plaintiff incorporates in this cause of action each and every allegation
6 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

7 42. Defendant owed a duty to Representative Plaintiff and members of the Class to
8 exercise reasonable care in making representations about all charges associated with consumer use
9 of the Pre-paid calling cards SPRINT offered for sale thereto.

10 43. Defendant should have known of the nature and amount of all surcharges and, thus,
11 should have known that its representations, as detailed in this Complaint, were false or would
12 become false prior to use of SPRINT's Pre-paid calling cards by Representative Plaintiff and
13 members of the Class.

14 44. Defendant's representations were negligently and recklessly made to potential
15 consumers and the general public through uniform statements prepared and/or disseminated by
16 Defendant. As a direct and proximate result of these misrepresentations, Representative Plaintiff
17 and Class members have been damaged in an amount to be proven at trial.

18
19 **FOURTH CAUSE OF ACTION**
20 **DECEPTIVE ADVERTISING PRACTICES**
(California Business & Professions Code §§ 17500, et seq.)

21 45. Representative Plaintiff incorporates in this cause of action each and every allegation
22 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

23 46. California Business & Professions Code § 17500 prohibits "unfair, deceptive, untrue
24 or misleading advertising."

25 47. Defendant violated California Business & Professions Code § 17500 when it
26 represented, through its advertising, warranties, and other express representations that SPRINT's
27 Pre-paid calling cards possessed characteristics and value that they did not actually have.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 48. Defendant’s deceptive practices were specifically designed to induce Representative
2 Plaintiff and members of the Class to purchase these Pre-paid calling cards. Defendant engaged in
3 broad-based marketing efforts in order to reach Representative Plaintiff and Class members and
4 induce them to purchase SPRINT’s Pre-paid calling cards.

5 49. To this day, Defendant continues to engage in unlawful, unfair and deceptive
6 practices in violation of California Business & Professions Code § 17500. Specifically, Defendant
7 continues to conceal the true value of the Pre-paid calling cards described in this Complaint and has
8 failed to provide a remedy for its violations.

9 50. As a proximate result of its violations of California Business & Professions Code §
10 17500, Defendant should be required to provide all proper remedies to Representative Plaintiff and
11 members of the Class.

12
13 **FIFTH CAUSE OF ACTION**
14 **CONSUMERS LEGAL REMEDIES ACT**
15 **(California Civil Code §1750, et seq.)**

16 51. Representative Plaintiff incorporates in this cause of action each and every allegation
17 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

18 52. Representative Plaintiff and the members of the Class are consumers who purchased
19 Pre-paid calling cards from Defendant for personal and/or commercial use.

20 53. Representing that these Pre-paid calling cards (goods) had/have characteristics, uses
21 and/or benefits which they did/do not have constitute[d/s] an unfair or deceptive trade practice under
22 the provisions of California Civil Code § 1770(a)(5) (Consumers Legal Remedies Act).

23 54. Representative Plaintiff and the members of the Class have all been directly and
24 proximately injured by Defendant’s conduct, and such injury includes the purchase of Pre-paid
25 calling cards that they would not have purchased if they had truthfully and fully been informed of
26 material facts concerning inflated surcharges associated with SPRINT’s Pre-paid calling cards.

27 55. Insofar as Defendant’s conduct violated California Civil Code § 1770(a)(5),
28 Representative Plaintiff and members of the Class are entitled (pursuant to California Civil Code
§ 1780, et seq.) and do seek injunctive and equitable relief to end Defendant’s violations of the

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 Consumers Legal Remedies Act. Representative Plaintiff, on his own behalf and on behalf of
2 members of the Class, further requests that this Court enter such orders or judgments as may be
3 necessary to restore to any person in interest any money which may have been acquired by means
4 of such unfair business practices, and for such other relief as provided in Civil Code § 1780 and the
5 Prayer for Relief.

6
7
8 **SIXTH CAUSE OF ACTION**
9 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
10 **(California Business & Professions Code §§ 17200, et seq.)**

11 56. Representative Plaintiff incorporates in this cause of action each and every allegation
12 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

13 57. Representative Plaintiff further brings this cause of action on behalf of those similarly
14 situated, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained
15 of herein, and to seeks restitution from Defendant through the unfair, unlawful and fraudulent
16 business practices described herein.

17 58. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
18 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
19 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
20 mandates cited herein. In engaging in these unlawful business practices, SPRINT has enjoyed an
21 advantage over its competition and a resultant disadvantage to the public

22 59. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
23 these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders
24 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as
25 set forth in California Business & Professions Code §§ 17200-17208.

26 60. Defendant has clearly established a policy of accepting a certain amount of collateral
27 damage, as represented by the damages to Representative Plaintiff and the Plaintiff Class herein
28 alleged, as incidental to its business operations, rather than accept the alternative costs of full
compliance with fair, lawful and honest business practices ordinarily borne by responsible

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 competitors of Defendant and as set forth in legislation and the judicial record.

2
3 **RELIEF SOUGHT**

4 **WHEREFORE, the** Representative Plaintiff, on behalf of himself and the proposed **Class**,
5 prays for judgment and the following specific relief against Defendant, as follows:

6 1. For an Order certifying the proposed and/or any other appropriate subclass under
7 Code of Civil Procedure § 382 and/or California Civil Code § 1781;

8 2. That defendant SPRINT is found to have breached its contracts with Representative
9 Plaintiff and Class members;

10 3. That defendant SPRINT is found to have made fraudulent and/or negligent
11 misrepresentations to Representative Plaintiff and Class members;

12 4. That defendant SPRINT is found to have violated California Business & Professions
13 Code §§ 17200, et seq., §§ 17500, et seq, and California Civil Code §§1750, et seq, as to the
14 Representative Plaintiff and Class members;

15 5. An award to Representative Plaintiff and Class members of damages in an amount
16 to be proven at trial;

17 6. That defendant SPRINT be ordered to pay restitution to Representative Plaintiff and
18 the Class members due to defendant SPRINT's unlawful activities as set forth herein, pursuant to
19 Business and Professions Code §§ 17200-08;

20 7. That defendant SPRINT further be enjoined to cease and desist from unlawful
21 activities in violation of Business and Professions Code § 17200 and California Civil Code §§1750,
22 et seq.;

23 8. For Punitive Damages in an amount appropriate to punish Defendant and to deter
24 others from engaging in similar misconduct in the future;

25 9. For all other Orders, findings and determinations identified and sought in this
26 Complaint;

27 10. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

- 11. For reasonable Attorneys' Fees, pursuant to California Civil Code §1021.5; and
- 12. For costs of suit and any and all such other relief as the Court deems just and proper.

JURY DEMAND

Representative Plaintiff and the Plaintiff Class hereby demand trial by jury on all issues triable of right by jury.

Dated: May 16, 2006

SCOTT COLE & ASSOCIATES, APC

By: /s/ Matthew R. Bainer
Matthew R. Bainer, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Classes

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1690 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28