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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SYLVIA NIXON, individually, and
on behalf of all others similarly
situated,

Plaintiff,

vs.

SPRINT COMMUNICATIONS,
INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)

Jury Trial Demanded

1 Plaintiff Sylvia Nixon (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant
5 SPRINT COMMUNICATIONS, INC. (hereinafter “Defendant”) to stop
6 Defendant’s practice of falsely advertising its services in order to falsely induce
7 consumers to switch to their telephone service and to obtain redress for all
8 California consumers (“Class Members”) who were represented to (a) have their
9 termination fee paid off, (b) have their new telephone bill with Defendant be
10 priced at a maximum of half of the cellular telephone bill of any current bill, or
11 (c) get a prepaid visa card and purchased Defendant’s services as a result, within
12 the applicable statute of limitations period, Defendant (hereinafter collectively
13 referred to as the “Class Services”).

14 2. Defendant is a Kansas corporation and is engaged in the advertising,
15 sale, and provider of telephone services with a large share of its business done in
16 California.

17 3. Defendant represents to prospective consumers that if they switch to
18 Defendant’s telephone services from another service provider, then Defendant
19 would pay for the consumer’s termination bill, have their current cellular
20 telephone bill cut in half, and get prepaid visa cards.

21 4. Plaintiff and others similarly situated purchased Defendant’s
22 telephone services.

23 5. Defendant misrepresented and falsely advertised to Plaintiff and
24 others similarly situated that it would provide these services when Defendant had
25 no intention of doing so.

26 6. Defendant’s misrepresentations to Plaintiff and others similarly
27 situated caused them to purchase Defendant’s telephone services, which Plaintiff
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1 and others similarly situated would not have purchased absent these
2 misrepresentations by Defendant and its employees. In so doing, Defendant has
3 violated California consumer protection statutes.

4 **JURISDICTION AND VENUE**

5 7. This class action is brought pursuant to Federal Rule of Civil
6 Procedure 23. All claims in this matter arise exclusively under California law.

7 8. This matter is properly venued in the United States District Court
8 for the Central District of California, in that Plaintiff was subject to Defendant's
9 advertisements at her place of residence located within Los Angeles County and
10 in the Central District of California. In addition, Defendant does business, inter
11 alia, in the Central District of California.

12 9. There is original federal subject matter jurisdiction over this matter
13 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4
14 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides
15 for the original jurisdiction of federal courts in any class action in which at least
16 100 members are in the proposed plaintiff class, any member of the plaintiff
17 class is a citizen of a State different from the State of citizenship of any
18 defendant, and the matter in controversy exceeds the sum of \$5,000,000.00,
19 exclusive of interests and costs.

20 10. In the case at bar, there are at least 100 members in the proposed
21 Class, the total claims of the proposed Class members are in excess of
22 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff and
23 the class are citizens of California State.

24 **THE PARTIES**

25 11. Plaintiff Sylvia Nixon is a citizen and resident of the State of
26 California, County of Los Angeles.

27 12. Defendant SPRINT COMMUNICATIONS, INC. is a corporation
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1 with its principal place of business located and headquarters is located in Kansas.
2 Defendant conducts a large share of its business within California.

3 13. Plaintiff is informed and believes, and thereon alleges, that each and
4 all of the acts and omissions alleged herein were performed by, or is attributable
5 to, Defendant and/or its employees, agents, and/or third parties acting on its
6 behalf, each acting as the agent for the other, with legal authority to act on the
7 other's behalf. The acts of any and all of Defendant's employees, agents, and/or
8 third parties acting on its behalf, were in accordance with, and represent, the
9 official policy of Defendant.

10 14. Plaintiff is informed and believes, and thereon alleges, that said
11 Defendant is in some manner intentionally, negligently, or otherwise responsible
12 for the acts, omissions, occurrences, and transactions of each and all its
13 employees, agents, and/or third parties acting on its behalf, in proximately
14 causing the damages herein alleged.

15 15. At all relevant times, Defendant ratified each and every act or
16 omission complained of herein. At all relevant times, Defendant, aided and
17 abetted the acts and omissions as alleged herein.

18 **PLAINTIFF'S FACTS**

19 16. In or around November of 2014, Plaintiff purchased a telephone
20 service plan from Defendant.

21 17. For the service plan, Plaintiff paid more than valuable consideration.

22 18. A salesperson of Defendant who was authorized to make
23 representations on behalf of Defendant informed Plaintiff that if she switched to
24 Defendant's telephone plan, then she would pay half of what she was currently
25 paying for the same telephone services, have her termination fee with her current
26 company paid for by Defendant and would get three \$350 prepaid visa cards.

27 19. Relying on the assurance that Plaintiff would receive the above
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1 referenced service and products, Plaintiff decided to terminate her current
2 telephone service and purchase the telephone services from Defendant. Plaintiff
3 purchased the telephone service because of the above referenced representations
4 made by Defendant.

5 20. However, after Plaintiff purchased Defendant's telephone services,
6 she did not receive any of the things that Defendant had advertised.

7 21. First, Defendant began charging Plaintiff well over fifty percent of
8 what she had previously paid for her telephone services.

9 22. Second, Defendant failed to provide Plaintiff with all three \$350 visa
10 cards. Instead, Defendant only provided Plaintiff with two of the visa cards and
11 even charged Plaintiff for them.

12 23. Third, Defendant never covered the costs of Plaintiff's termination
13 plan. Instead, Plaintiff had to pay approximately \$1,500 in fees to her previous
14 telephone service provider in order to switch to Defendant's service.

15 24. Finally, in or around May of 2016, Defendant unilaterally canceled
16 Plaintiff's telephone services and never provided her with any of the services
17 that she paid nor what Defendant offered Plaintiff.

18 25. Such sales tactics rely on falsities and have a tendency to mislead
19 and deceive a reasonable consumer.

20 26. Defendant expressly represented to Plaintiff that it would (a) pay for
21 the termination bill, (b) cut the current phone bill in half, and (c) provide prepaid
22 visa cards.

23 27. Plaintiff alleges that such representations were part of a common
24 scheme to mislead consumers and incentivize them to purchase telephone
25 services in spite of the inhibition brought about by the difficulty of installing
26 them.

27 28. In purchasing the Class Services, Plaintiff relied upon Defendant's
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1 representations.

2 29. Such representations were clearly false because Plaintiff did not
3 have her termination fee paid, paid more than fifty percent on her telephone bill,
4 and never received the prepaid visa cards.

5 30. Plaintiff would not have purchased the telephone service if she
6 knew that the above-referenced statements made by Defendant were false.

7 31. Had Defendant properly marketed, advertised, and represented the
8 Class Services, Plaintiff would not have purchased the telephone service.

9 32. Plaintiff gave her money to Defendant because of Defendant's
10 representations. Defendant benefited from falsely advertising the telephone
11 service. Defendant benefited on the loss to Plaintiff and provided nothing of
12 benefit to Plaintiff in exchange.

13 33. Had Defendant properly marketed, advertised, and represented the
14 Class Services, no reasonable consumer who purchased a telephone service
15 would have believed that Defendant would pay for the termination fees, provide
16 telephone services for half the price, or provide prepaid visa cards.

17 **CLASS ACTION ALLEGATIONS**

18 34. Plaintiff brings this action, on behalf of herself and all others
19 similarly situated, and thus, seeks class certification under Federal Rule of Civil
20 Procedure 23.

21 35. The class Plaintiff seeks to represent (the "Class") is defined as
22 follows:

23 All California Citizens who, between the applicable
24 statute of limitations and the present, purchased one or
25 more Class Services in the State of California, and
26 whose telephone service was advertised such that (a)
27 Defendant would pay for the termination fees, (b)
28 provide telephone services for half the price, or (c)
provide prepaid visa cards.

36. As used herein, the term "Class Members" shall mean and refer to

1 the members of the Class described above.

2 37. Excluded from the Class are Defendant, its affiliates, employees,
3 agents, and attorneys, and the Court.

4 38. Plaintiff reserves the right to amend the Class, and to add additional
5 subclasses, if discovery and further investigation reveals such action is
6 warranted.

7 39. Upon information and belief, the proposed class is composed of
8 thousands of persons. The members of the class are so numerous that joinder of
9 all members would be unfeasible and impractical.

10 40. No violations alleged in this complaint are contingent on any
11 individualized interaction of any kind between class members and Defendant.

12 41. Rather, all claims in this matter arise from the identical, false,
13 affirmative statements to Class Members' when contemporaneously purchasing
14 telephone services, when in fact, such representations were false.

15 42. There are common questions of law and fact as to the Class
16 Members that predominate over questions affecting only individual members,
17 including but not limited to:

18 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
19 business practices in selling Class Services to Plaintiff and
20 other Class Members;

21 (b) Whether Defendant made misrepresentations with respect to
22 the Class Services sold to consumers;

23 (c) Whether Defendant profited from both the sale of the
24 telephone services and HP Smart Install feature;

25 (d) Whether Defendant violated California Bus. & Prof. Code §
26 17200, *et seq.* and California Bus. & Prof. Code § 17500, *et*
27 *seq.*;

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- 1 (e) Whether Plaintiff and Class Members are entitled to equitable
- 2 and/or injunctive relief;
- 3 (f) Whether Defendant's unlawful, unfair, and/or deceptive
- 4 practices harmed Plaintiff and Class Members; and
- 5 (g) The method of calculation and extent of damages for Plaintiff
- 6 and Class Members.

7 43. Plaintiff is a member of the class she seeks to represent

8 44. The claims of Plaintiff are not only typical of all class members,
9 they are identical.

10 45. All claims of Plaintiff and the class are based on the exact same
11 legal theories.

12 46. Plaintiff has no interest antagonistic to, or in conflict with, the class.

13 47. Plaintiff is qualified to, and will, fairly and adequately protect the
14 interests of each Class Member, because Plaintiff bought Class Services from
15 Defendant during the Class Period. Defendant's unlawful, unfair and/or
16 fraudulent actions concerns the same business practices described herein
17 irrespective of where they occurred or were experiences. Plaintiff's claims are
18 typical of all Class Members as demonstrated herein.

19 48. Plaintiff will thoroughly and adequately protect the interests of the
20 class, having retained qualified and competent legal counsel to represent herself
21 and the class.

22 49. Common questions will predominate, and there will be no unusual
23 manageability issues.

24 **FIRST CAUSE OF ACTION**

25 **Violation of the California False Advertising Act**

26 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

27 50. Plaintiff incorporates by reference each allegation set forth above.

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1 51. Pursuant to California Business and Professions Code section
2 17500, *et seq.*, it is unlawful to engage in advertising “which is untrue or
3 misleading, and which is known, or which by the exercise of reasonable care
4 should be known, to be untrue or misleading...or...to so make or disseminate or
5 cause to be so made or disseminated any such statement as part of a plan or
6 scheme with the intent not to sell that personal property or those services,
7 professional or otherwise, so advertised at the price stated therein, or as so
8 advertised.”

9 52. California Business and Professions Code section 17500, *et seq.*’s
10 prohibition against false advertising extends to the use of false or misleading
11 statements.

12 53. Defendant misled consumers by making misrepresentations and
13 untrue statements about the Class Services, namely, Defendant sold the
14 telephone services advertised such that Defendant would pay for the termination
15 fees, provide telephone services for half the price, or provide prepaid visa cards,
16 and made false representations to Plaintiff and other putative class members in
17 order to solicit these transactions.

18 54. Defendant knew that their representations and omissions were
19 untrue and misleading, and deliberately made the aforementioned representations
20 and omissions in order to deceive reasonable consumers like Plaintiff and other
21 Class Members.

22 55. As a direct and proximate result of Defendant’s misleading and false
23 advertising, Plaintiff and the other Class Members have suffered injury in fact
24 and have lost money or property. Plaintiff reasonably relied upon Defendant’s
25 representations regarding the Class Services. In reasonable reliance on
26 Defendant’s false advertisements, Plaintiff and other Class Members purchased
27 the Class Services. In turn Plaintiff and other Class Members ended up with
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1 telephone services that turned out to actually be different than advertised, and
2 therefore Plaintiff and other Class Members have suffered injury in fact.

3 56. Plaintiff alleges that these false and misleading written
4 representations made by Defendant constitute a “scheme with the intent not to
5 sell that personal property or those services, professional or otherwise, so
6 advertised at the price stated therein, or as so advertised.”

7 57. Defendant advertised to Plaintiff and other putative class members,
8 through affirmative representations made by Defendant and its employees, that
9 Defendant would pay for the termination fees, provide telephone services for
10 half the price, or provide prepaid visa cards, and made false representations to
11 Plaintiff and other putative class members in order to solicit these transactions.

12 58. Defendant knew that it would not provide these services or products.

13 59. Thus, Defendant knowingly sold Class Services to Plaintiff and
14 other putative class members under false representations.

15 60. The misleading and false advertising described herein presents a
16 continuing threat to Plaintiff and the Class Members in that Defendant persists
17 and continues to engage in these practices, and will not cease doing so unless and
18 until forced to do so by this Court. Defendant’s conduct will continue to cause
19 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled
20 to preliminary and permanent injunctive relief ordering Defendant to cease their
21 false advertising, as well as disgorgement and restitution to Plaintiff and all
22 Class Members Defendant’s revenues associated with their false advertising, or
23 such portion of those revenues as the Court may find equitable.

24 **SECOND CAUSE OF ACTION**

25 **Violation of Unfair Business Practices Act**

26 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

27 61. Plaintiff incorporates by reference each allegation set forth above.
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1 substantial injury to Plaintiff and members of the Class. Plaintiff and members
2 of the Class have suffered injury in fact due to Defendant's decision to sell them
3 falsely described telephone services (Class Services). Thus, Defendant's
4 conduct has caused substantial injury to Plaintiff and the members of the Class.

5 66. Moreover, Defendant's conduct as alleged herein solely benefits
6 Defendant while providing no benefit of any kind to any consumer. Such
7 deception utilized by Defendant convinced Plaintiff and members of the Class
8 that Defendant would pay for the termination fees, provide telephone services for
9 half the price, or provide prepaid visa cards, and made false representations to
10 Plaintiff and other putative class members in order to solicit these transactions,
11 in order to induce them to spend money on said Class Services. In fact, knowing
12 that Class Services, by their objective terms did not include what was advertised
13 for Plaintiff and other putative class members' telephone services, Defendant
14 unfairly profited from their sale, in that Defendant knew that the expected benefit
15 that Plaintiff would receive is nonexistent. Thus, the injury suffered by Plaintiff
16 and the members of the Class is not outweighed by any countervailing benefits to
17 consumers.

18 67. Finally, the injury suffered by Plaintiff and members of the Class is
19 not an injury that these consumers could reasonably have avoided. After
20 Defendant, falsely represented that Class Services, these consumers suffered
21 injury in fact due to Defendant's sale of Class Services to them. Defendant
22 failed to take reasonable steps to inform Plaintiff and class members that the
23 Class Services did not include the products and services advertised, including
24 failing to provide an opportunity to Plaintiff and class members to read and
25 review an accurate description of what was offered with the Class Services prior
26 to purchase. As such, Defendant took advantage of Defendant's position of
27 perceived power in order to deceive Plaintiff and the Class members to purchase
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1 their telephone services. Therefore, the injury suffered by Plaintiff and members
2 of the Class is not an injury which these consumers could reasonably have
3 avoided.

4 68. . Thus, Defendant’s conduct has violated the “unfair” prong of
5 California Business & Professions Code § 17200.

6 **FRAUDULENT**

7 69. California Business & Professions Code § 17200 prohibits any
8 “fraudulent ... business act or practice.” In order to prevail under the
9 “fraudulent” prong of the UCL, a consumer must allege that the fraudulent
10 business practice was likely to deceive members of the public.

11 70. The test for “fraud” as contemplated by California Business and
12 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
13 common law fraud, a § 17200 violation can be established even if no one was
14 actually deceived, relied upon the fraudulent practice, or sustained any damage.

15 71. Here, not only were Plaintiff and the Class members likely to be
16 deceived, but these consumers were actually deceived by Defendant. Such
17 deception is evidenced by the fact that Plaintiff agreed to purchase Class
18 Services under the basic assumption that they included the advertised products
19 and services, even though Defendant never paid for the termination fees, never
20 provided telephone services for half the price, and never provided prepaid visa
21 cards, and made false representations to Plaintiff and other putative class
22 members in order to solicit these transactions. Plaintiff’s reliance upon
23 Defendant’s deceptive statements is reasonable due to the unequal bargaining
24 powers of Defendant and Plaintiff. For the same reason, it is likely that
25 Defendant’s fraudulent business practice would deceive other members of the
26 public.

27 72. As explained above, Defendant deceived Plaintiff and other Class
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1 Members and falsely represented the Class Services.

2 73. Thus, Defendant's conduct has violated the "fraudulent" prong of
3 California Business & Professions Code § 17200.

4 **UNLAWFUL**

5 74. California Business and Professions Code Section 17200, et seq.
6 prohibits "any unlawful...business act or practice."

7 75. As explained above, Defendant deceived Plaintiff and other Class
8 Members by misrepresenting the Class Services to Plaintiff and Class Members.

9 76. Defendant used false advertising, marketing, and misrepresentations
10 to induce Plaintiff and Class Members to purchase the Class Services, in
11 violation of California Business and Professions Code Section 17500, et seq.
12 Had Defendant not falsely advertised, marketed or misrepresented the Class
13 Services, Plaintiff and Class Members would not have purchased the Class
14 Services. Defendant's conduct therefore caused and continues to cause economic
15 harm to Plaintiff and Class Members.

16 77. These representations by Defendant are therefore an "unlawful"
17 business practice or act under Business and Professions Code Section 17200 *et*
18 *seq.*

19 78. Defendant has thus engaged in unlawful, unfair, and fraudulent
20 business acts entitling Plaintiff and Class Members to judgment and equitable
21 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
22 pursuant to Business and Professions Code section 17203, Plaintiff and Class
23 Members seek an order requiring Defendant to immediately cease such acts of
24 unlawful, unfair, and fraudulent business practices and requiring Defendant to
25 correct its actions.

26 **MISCELLANEOUS**

27 79. Plaintiff and Class Members allege that they have fully complied
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1 with all contractual and other legal obligations and fully complied with all
2 conditions precedent to bringing this action or all such obligations or conditions
3 are excused.

4 **REQUEST FOR JURY TRIAL**

5 80. Plaintiff requests a trial by jury as to all claims so triable.

6 **PRAYER FOR RELIEF**

7 81. Plaintiff, on behalf of herself and the Class, requests the following
8 relief:

- 9 (a) An order certifying the Class and appointing Plaintiff as
10 Representative of the Class;
- 11 (b) An order certifying the undersigned counsel as Class Counsel;
- 12 (c) An order requiring SPRINT COMMUNICATIONS, INC., at
13 its own cost, to notify all Class Members of the unlawful and
14 deceptive conduct herein;
- 15 (d) An order requiring SPRINT COMMUNICATIONS, INC. to
16 engage in corrective advertising regarding the conduct
17 discussed above;
- 18 (e) Actual damages suffered by Plaintiff and Class Members as
19 applicable or full restitution of all funds acquired from
20 Plaintiff and Class Members from the sale of misbranded
21 Class Services during the relevant class period;
- 22 (f) Punitive damages, as allowable, in an amount determined by
23 the Court or jury;
- 24 (g) Any and all statutory enhanced damages;
- 25 (h) All reasonable and necessary attorneys' fees and costs
26 provided by statute, common law or the Court's inherent
27 power;
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- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: February 13, 2017 Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s/ Todd M. Friedman
TODD M. FRIEDMAN, ESQ.
Attorney for Plaintiff Sylvia Nixon