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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Josh Daniels, General Counsel

**Board Meeting Date** February 12, 2020

**Subject** Acceptance of Settlement Awarded to the Oakland Unified School District ("District")

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**Action Requested and Recommendation** Acceptance by the Board of Education of a preliminary settlement awarded to the District in the amount \$2,229.43 from Nextel of California, Inc. d/b/a/ Sprint, pursuant to the terms and conditions thereof.

**Background** A lawsuit was filed by Relator OnTheGo Wireless, LLC on July 5, 2012, pursuant to the California False Claims Act ("CFCA"), on behalf of real parties in interest the State of California and political subdivisions identified therein alleging that the Defendants (Sprint Nextel) failed to comply with the terms of cooperative purchasing agreements, including the California Wireless Contract ("CWC") and the Western States Contracting Alliance ("WSCA") contracts awarded to Defendants to provide wireless equipment and services to California government entities. Sprint's alleged failure to comply with these provisions resulted in overcharges to those California government customers.

**Discussion** To receive the full amount of the share allocated to a Non-Intervenor (District), the District must execute a Consent Page, consenting to the terms of the Settlement Agreement, including general release.

**Fiscal Impact** The total settlement value will be provided to OUSD schools.

- Settlement award valued at \$2,229.

**Recommendation**

Acceptance by the Board of Education of a preliminary settlement awarded to the District in the amount \$2,229.43 from Nextel of California, Inc. d/b/a/ Sprint, pursuant to the terms and conditions thereof, if any.

**Attachment**

- Consent and Release for Non-Intervenors
- Case File, State of California et al. ex rel. OnTheGo Wireless, LLC, Case No. 34-2012-00127517

CONSTANTINE | CANNON



Wayne T. Lamprey  
Anne Hayes Hartman  
Ari Yampolsky  
415-639-4001

SAN FRANCISCO | NEW YORK | WASHINGTON | LONDON

November 26, 2019

Oakland Unified School District  
Attn: Joshua Daniels  
General Counsel  
1000 Broadway, Ste 300  
Oakland, CA 94607

Re: *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)  
Settlement with Sprint: **Action Required**

Dear Sir or Madam:

The enclosed Notice of Settlement is directed to Oakland Unified School District as a non-intervening real party in interest (“Non-Intervenor”) in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, in the form required by the order of the Court preliminary approving a settlement between Plaintiffs and Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (“Sprint”).

**YOUR RESPONSE TO THIS NOTICE WILL DETERMINE THE AMOUNT OF MONEY THAT OAKLAND UNIFIED SCHOOL DISTRICT WILL RECEIVE AS A RESULT OF THIS SETTLEMENT.** The settlement payment to Oakland Unified School District can be calculated from information in the enclosed pleadings. For your convenience, we outline the calculations here:

Total settlement amount for California government entities	\$9,220,391
Sprint revenue from Oakland Unified School District during relevant time period <sup>162</sup>	\$63,960

<sup>162</sup> As part of the settlement, Sprint provided a sworn statement regarding its relevant sales during the applicable time period (“Sprint Revenue Statement”). If you would like to review the Sprint Revenue Statement, please contact us. The Sprint Revenue Statement is subject to a court confidentiality order which you must review and acknowledge.

NYDOCS 440927v.1

**Oakland Unified School District**

November 26, 2019

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Share of Sprint revenue and settlement for Oakland Unified School District	0.04%
Gross settlement allocation to Oakland Unified School District (0.04% of \$9,220,391)	\$3,843.85
Relator's share of Non-Intervenor recoveries as preliminarily approved by court	42%
<b>Net settlement allocation to Oakland Unified School District after Relator's Share</b>	<b>\$2,229.43</b>

**In order to receive the entire Net Settlement Allocation, Oakland Unified School District must execute the Consent Page, as set forth in the attached, and return it to Plaintiffs' counsel by February 18, 2020.** Pursuant to the terms of the settlement as preliminarily approved by the court, if Oakland Unified School District does not return an executed Consent Page by that date, its **settlement allocation will be reduced by 10%.**

We encourage you to contact us directly with any questions about the T-Mobile Settlement or the enclosed notification and documents. You can reach Wayne Lamprey, Anne Hartman, or Ari Yampolsky at (415) 639-4001.

Sincerely,

CONSTANTINE CANNON LLP




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Wayne T. Lamprey  
 Anne Hayes Hartman  
 Ari Yampolsky  
 Attorneys for Plaintiffs Regents of the  
 University of California, et al. and Plaintiff-  
 Relator OnTheGo Wireless, LLC

# CONSTANTINE | CANNON

SAN FRANCISCO | NEW YORK | WASHINGTON | LONDON

Wayne T. Lamprey  
Anne Hayes Hartman  
Ari Yampolsky  
415-639-4001

November 26, 2019

Oakland Unified School District  
Attn: Joshua Daniels  
General Counsel  
1000 Broadway, Ste 300  
Oakland, CA 94607

**Re: Notice of settlement with Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. and distribution of settlement proceeds in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)**

Dear Sir or Madam:

You are receiving this letter because Oakland Unified School District is a non-intervening real party in interest (“Non-Intervenor”) in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County. Plaintiffs and defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications, and Sprint Solutions, Inc. (collectively, “Sprint”) have entered into a Settlement Agreement in the case, and Oakland Unified School District has been identified as a party that will receive a share of the Sprint settlement payment.

## The Lawsuit

The lawsuit was filed by Relator OnTheGo Wireless, LLC on July 5, 2012, pursuant to the California False Claims Act (“CFCA”), on behalf of real parties in interest the State of California and political subdivisions identified therein. The lawsuit, which named several defendants, including Sprint, generally alleged that Defendants failed to comply with the terms of cooperative purchasing agreements, including the California Wireless Contract (“CWC”) and the Western States Contracting Alliance (“WSCA”) contracts awarded to Defendants to provide wireless equipment and services to California government entities. As relevant here, Plaintiffs allege that the CWC and WSCA agreements, and other agreements related to them, required Sprint to provide its California government customers purchasing wireless services pursuant to those agreements with “rate plan optimization reports” and wireless services at the lowest cost available. Sprint’s alleged failure to comply with these provisions resulted in overcharges to those California government customers.

NYDOCS 440927v.1

# CONSTANTINE | CANNON

Oakland Unified School District  
November 26, 2019  
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## The Settlement

The parties have agreed to settle this case with respect to Sprint only. Copies of documents filed with the Court in support of the settlement, which include the Settlement Agreement, are included herewith.

To receive the full amount of the share allocated to a Non-Intervenor in the Proposed Allocation, if any, the Non-Intervenor must execute a Consent Page in the form attached hereto and return the executed Consent Page to Plaintiffs' counsel by **February 18, 2020**. By doing so, a Non-Intervenor affirmatively consents to the terms of the Settlement Agreement, including the general release contained therein. Original signatures are not required. The executed Consent Page may be returned to Plaintiffs' counsel by the following methods:

Mail to: Anne Hartman  
Constantine Cannon LLP  
150 California Street, Suite 1600  
San Francisco, CA 94111

Fax to: (415) 639-4002

E-mail to: [ahartman@constantinecannon.com](mailto:ahartman@constantinecannon.com)

If a Non-Intervenor does not execute the Consent Page, and therefore does not agree to be bound by the Terms of the Settlement Agreement, then the Non-Intervenor will a) receive only 90% of the amount allocated to it in the Proposed Allocation and b) release only the specific claims Plaintiffs asserted under Government Code section 12651(a) in this litigation.

In addition, Plaintiffs will apply to the Court for a Relator's share pursuant to California Government Code section 12652(g)(3) and attorney fees pursuant to California Government Code section 12652(g)(8). As set for in the Settlement Agreement and Proposed Allocation, Plaintiffs requested a Relator's share of 42% with respect to any amounts allocated to Non-Intervenors, and attorney fees in the amount of \$2,000,000.

## Hearing

The Court has set a hearing for final approval of the Settlement Agreement for **March 17, 2020 at 1:30 p.m.**, to be held in Department 92 of the Sacramento Superior Court, located at 9605 Kiefer Boulevard in Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement Agreement – including but not limited to the dismissal of the Civil Action with prejudice as to Sprint, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs' counsel – are in all respects fair, adequate, and reasonable, and in the best interests of the parties involved, serve the public purposes behind the CFCA, and should be finally approved.

Oakland Unified School District

November 26, 2019

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**How to object**

The Court has ordered that any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Pursuant to the Court's order, objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court only if, on or before **March 4, 2020**, a Non-Intervenor files written notice of the intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and shall serve copies thereof, together with proof of service, on or before said date upon counsel for Plaintiffs and Sprint.

**Additional information**

If you have any questions about this notification and settlement payment, or the terms of the settlement agreement, please contact **Anne Hartman** at **(415) 766-3532**. If the recipient of this letter is not an attorney who represents Oakland Unified School District in civil legal proceedings, you may want to consult with such counsel.

Sincerely,

CONSTANTINE CANNON LLP



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Wayne T. Lamprey  
Anne Hayes Hartman  
Ari Yampolsky  
Attorneys for Plaintiffs Regents of the  
University of California, et al. and Plaintiff-  
Relator OnTheGo Wireless, LLC

Enclosures:


- Consent and Release for Non-Intervenors
- Order Preliminarily Approving Settlement with Sprint Defendants and Notice Procedures; November 12, 2019
- Notice of Motion and Motion for Preliminary Approval of Settlement with Sprint Defendants; Memorandum of Points and Authorities; filed by Plaintiffs Regents of the University of California et al. and Plaintiff-Relator OnTheGo Wireless, LLC ("Plaintiffs"), September 27, 2019
- Declaration of Anne H. Hartman in Support of Motion for Preliminary Approval of Settlement with Sprint Defendants; filed by Plaintiffs, September 27, 2019

**Consent and Release for Non-Intervenors**

1. The undersigned has received and reviewed a copy of the Settlement and Release Agreement executed by and between Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint"), Relator OnTheGo Wireless, LLC, and the political subdivisions that intervened in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County ("Settlement Agreement"), the Notice of Proposed Settlement, and the Court's Preliminary Approval Order.

2. The undersigned hereby represents and warrants that he or she is fully authorized to provide binding consent on behalf of the Non-Intervenor identified below.

3. By signing below and returning this document to Plaintiffs' counsel pursuant to the terms of and by the deadline set forth in the Court's Preliminary Approval Order, the identified Non-Intervenor hereby agrees to be bound by the terms of the Settlement Agreement, including specifically the releases contained therein, and to be treated as a Party to the Settlement Agreement for all relevant purposes.

Dated: \_\_\_\_\_  
  
Jody London  
President, Board of Education

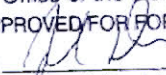
\_\_\_\_\_  
  
Kyle Johnson-Trammell  
Superintendent and  
Secretary, Board of Education  
Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of:

\_\_\_\_\_  
Non-Intervenor Name

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By:  12/27/19  
Joshua R. Daniels, General Counsel



Date: November 6, 2019  
Judge: Judy Holzer Hersher  
Clerk: Elisa Padilla  
Court Reporter: Cara Foster, #  
Dept. No.: 92 (Posted To D45)

Case Name: State of California et al. ex rel. OnTheGo Wireless, LLC

Case No: 34-2012-00127517

**Hearing Date:**

Wednesday, November 6, 2019,

1:30 p. m., Department 92

9605 Kiefer Boulevard, Sacramento, California.

**FINAL RULING:**

**MOTION FOR PRELIMINARY APPROVAL OF AMENDED SETTLEMENT WITH SPRINT**

**APPEARANCES:**

**Anne Hartman, Constantine Cannon LLP on behalf of Plaintiffs Regents of the University of California, et al., Plaintiff-Relator OnTheGo Wireless, LLC and Regents of the University of California;**

**Kenny Nguyen, Office of the California Attorney General, on behalf of the People of the State of California;**

**William P. Ashworth, Williams & Connolly LLP, on behalf of Nextel West Corp. (as successor to Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications) and Sprint Solutions, Inc. (collectively, "Sprint"),**

**W. Scott Cameron, King & Spalding, on behalf of New Cingular Wireless National Accounts, LLC, d/b/a Cingular Wireless n/k/a AT&T Mobility National Accounts; appearing telephonically, Steve Koh, Perkins Coie LLP, on behalf of Defendant T-Mobile USA.**

Court and counsel discussed the preliminary grant of the Settlement between Plaintiffs and Defendants Nextel West Corp. (as successor to Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications) and Sprint Solutions, Inc. (collectively, "Sprint"). A number of mathematical calculations were corrected. Thereupon, the Tentative Ruling posted on November 4, 2019 was agreed to and is now adopted as the Final Ruling granting Preliminary Approval of the Amended Settlement with Sprint. The details, and revised calculations, are as stated below.

**Summary of Ruling**

The Motion is preliminarily GRANTED, subject to the final hearing to approve the Settlement between Qui Tam Plaintiff OnTheGo Wireless LLC ("Relator" or "OTG") Plaintiff-Relator OnTheGo Wireless, LLC ("the Relator" or "OTG") and intervening parties the Regents of the University of California, City of Chino, City of Corona, City of Fortuna, City of Fresno, City of Long Beach, City of Oxnard, City of Rancho Cucamonga, City of Ripon, City of Riverside, City of Sacramento, City of San Bernardino, City of San Mateo, City of Santa Rosa, City of Vernon, Los Angeles County, Marin County, Orange County, Riverside County, Sacramento County, San Bernardino County, Santa Cruz County, Sonoma County, Stanislaus County, Yuba County, San Diego Unified School District, Santa Ana Unified School District, Sonoma County Water Agency, Woodbridge Fire District, and the Board of Trustees of the California State University ("Interveners," and, collectively with Relator, "Plaintiffs") on one side, and Defendants Nextel West Corp. (as successor to Nextel of California, Inc. d/b/a Sprint Nextel and

Nextel Communications) and Sprint Solutions, Inc. (collectively, "Sprint"), on the other side, as described further below.

- Although the Proof of Service (Register of Actions ("ROA") 976) for the instant motion does not reflect notice of this hearing as having been served upon the Non-Intervenors, the Court finds no prejudice will result.
- The Court hereby approves the proposed procedure of providing all Non-Intervenors, Intervenor, and Defendants with notice and an opportunity to be heard regarding the Amended Settlement at a Final Settlement Approval Hearing.
- The Final Settlement Approval Hearing will occur in Department 92 at 1:30p.m. on **March 17, 2020**.
- Any opposition to final settlement approval shall be filed on or before **March 4, 2020**.
- The Court approves the proposed form of notice of the final approval hearing on Non-Intervenor Customers. (Exh. B to Declaration of Anne Hartman ("Hartman Decl.")). The Court approves the request to use mail service within 14 days of this tentative ruling becoming final.
- The Court approves the proposed form of notice to the Non-Intervenor Non-Customers. (Exh. C to Hartman Decl.) The Court also hereby approves the method of service on Non-Intervenor Non-Customers proposed on page 8 of the moving papers, namely: service of a document informing them of the date of the final settlement approval hearing and a deadline for objections, with directions to a webpage from which they can download the complete moving papers, and contact information for counsel.
- The Court preliminarily finds, subject to the final approval hearing, that the Settlement is fair, reasonable, in the best interests of the parties involved, and in furtherance of the public purposes behind the CFCA.
- The opt-in provisions of the Settlement are fair and reasonable.
- The release provisions of the Settlement are fair and reasonable.
- The proposed pro rata Settlement Allocation among Sprint Customers (Hartman Decl. ¶¶ 2, 10-11), based on the spreadsheet at Exhibit A to the Hartman Declaration, is fair and reasonable.
- The Court determines that, as proposed by Plaintiffs, the Non-Consenting Non-Intervenors shall receive 90% of their settlement allocations. The Court also hereby determines that the 10% "remainder" shall be relocated among the entities that have expressly opted into the Settlement Agreement, and that no funds will revert to Sprint.
- The Court preliminarily approves a 25% allocation (i.e., \$577,446) to Relator from the Intervenor's gross settlement allocation of \$2,309,793.
- The Court preliminarily approves a 42% allocation (i.e., \$2,902,451.00) to Relator from the Non-Intervenors' gross settlement allocation of \$6,910,597.00.
- The Court preliminarily approves Relator's request for \$2,000,000.00 in reasonable attorneys' fees and costs.

### **The Instant Motion**

Plaintiffs have filed papers seeking an order approving a proposed procedure for Non-Intervenors to receive notice of and an opportunity to join the Settlement that will resolve this case as to Sprint pursuant to Government Code § 12652(g)(2)-(3) on specific terms; an order approving a proposed form of notice of the final approval hearing; and an order preliminarily approving the terms of the settlement that those entities will have the opportunity to join.

A final approval of the Amended Settlement will resolve this case as to Sprint, dismissing Sprint from the action with prejudice pursuant to the agreement of Sprint and Plaintiffs, as reflected in a Settlement and Release Agreement (the "Settlement Agreement") and Joint Stipulation of Dismissal

with Prejudice. The Settlement Agreement addresses two separate lawsuits: this one, and one in Nevada. (Hartman Decl. ¶¶ 2-11.) Pursuant to the Amended Settlement, Sprint will pay \$9,220,391.00 to California entities. (Hartman Decl. ¶ 11.) (The instant ruling pertains only to the instant lawsuit in California; the Court did not consider the Settlement reached in connection with the Nevada action.)

According to the moving papers, the Settlement Agreement would release common-law claims and claims under the CFCA brought by Relator and intervening political subdivisions ("Intervenors"), as well as CFCA claims on behalf of California government entities that did not intervene, including the State of California and other political subdivisions ("Non-Intervenors"), many of whom did not make purchases from Sprint. (P&As at 1.)

The California Attorney General's Office ("AG") filed an Opposition to the Motion. The AG argues that the Relator's request for 45% of the Non-Intervenors' settlement allocation is unwarranted and excessive relative to the amount obtained for California entities and political subdivisions by way of the settlement. (Opp'n at 4-6.)

Plaintiffs filed a Reply memorandum. Therein, Plaintiffs represent that they have met and conferred with the AG regarding Plaintiffs' request for a 45% allocation of the Non-Intervenor's settlement proceeds, and have agreed that a 42% allocation would be acceptable here. While the AG contends that Plaintiffs could perhaps have achieved a better recovery for the *State of California*, the AG now agrees that a 42% allocation will account for the Relator's perhaps more extensive work on behalf of the *political subdivisions*. (Reply at 1-2.)

### **Background**

Relator filed this action in 2012 under the California False Claims Act ("CFCA") on behalf of the State of California and nearly 300 California political subdivisions who purchased wireless services from the four largest wireless service providers -- AT&T, Sprint, Verizon, and T-Mobile. (Plaintiffs have since settled with T-Mobile.) Relator alleges that Defendants promised to deliver -- and then knowingly failed to provide -- wireless services at the "lowest cost available" via "rate plan optimization" to California and its political subdivisions in cooperative-purchasing agreements. Plaintiffs allege that Defendants knowingly breached these agreements and overcharged California government entities.

In December 2015, 45 government entities (on whose behalf Relator sued) intervened in the action and brought additional common-law claims for breach of contract, unfair business practices, and unjust enrichment. The Intervenors include the Regents of the University of California, the Trustees of the California State University, the County of Sacramento, the City of Sacramento, and dozens of other local government entities.

Hundreds of remaining government entities on whose behalf Relator sued did not intervene. Instead, these "Non Intervenors" relied on Relator to prosecute their claims.. For purposes of the settlement at issue in the instant motion, and under the CFCA, entities that initially intervened but have since withdrawn their interventions are treated as Non-Intervenors.

The Third Amended Complaint ("TAC") was filed on June 28, 2019. (Register of Actions ("ROA") 876.) The TAC alleged seven claims for relief:

- (1) Violation of the California False Claims Act California Government Code § 12651(a)(1) (On behalf of Government Plaintiffs and Qui Tam Plaintiff against All Defendants)

- (2) Making False Records and Statements in Violation of the California False Claims Act California Government Code § 12651(a)(2) (On behalf of Government Plaintiffs and Qui Tam Plaintiff against All Defendants)
- (3) Unfair Business Practices California Business & Professions Code §§ 17200 et seq. (On behalf of False Claims Intervenors and CSU only against All Defendants)
- (4) Breach of Written Contract (On behalf of False Claims Intervenors and CSU against All Defendants)
- (5) Unjust Enrichment (On behalf of False Claims Intervenors and CSU against All Defendants)
- (6) Violation of California False Claims Act California Government Code § 12651(a)(8) (on behalf of Government Plaintiffs and Qui Tam Plaintiff against AT&T and Verizon)
- (7) Breach of Written Contract: Failure to Retain Records (on behalf of False Claims Intervenors and CSU against AT&T and Verizon)

The moving papers represent that "thirty-one Intervenors will sign the Settlement Agreement and participate as full parties," and that "[t]here are 172 Non-Intervenor Customers [of Sprint], including the State of California, that are allocated funds under the Settlement Agreement." (P&As at 1.) There are numerous Non-Intervenor Non-Customers that do not stand to receive funds as part of the settlement, but that will nevertheless receive notice and an opportunity to object to it.

### Legal Standards

"California courts have consistently reaffirmed that the Legislature 'obviously designed [the CFCA] to prevent fraud on the public treasury,' [citation] and that '[t]he ultimate purpose of the [CFCA] is to protect the public fisc.' [citations]." (State of California v. Altus Finance (2005) 36 Cal.4th 1284, 1296-97 (citations omitted).) Its purpose is "to supplement governmental efforts to identify and prosecute fraudulent claims made against state and local governmental entities." (City of Pomona v. Superior Court (2001) 89 Cal.App.4th 793, 801-02 (citing *Rothschild v. Tyco Internat. (US) Inc.* (2000) 83 Cal.App.4th 488, 494).) The CFCA "should be given the broadest possible construction consistent with that purpose." (Southern Cal. Rapid Transit Dist. v. Superior Court (1994) 30 Cal.App.4th 713, 725.)

As to whether the settlement of a CFCA action should be approved, Government Code § 12652(c)(1) provides:

A person may bring a civil action for a violation of this article for the person and either for the State of California in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are exclusively involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court and the Attorney General or prosecuting authority of a political subdivision, or both, as appropriate under the allegations of the civil action, taking into account the best interests of the parties involved and the public purposes behind this act. No claim for any violation of Section 12651 may be waived or released by any private person, except if the action is part of a court approved settlement of a false claim civil action brought under this section. Nothing in this paragraph shall be construed to limit the ability of the state or political subdivision to decline to pursue any claim brought under this section.

(Gov't Code § 12652(c)(1) (emphasis added).)

Under this section, approval of any settlement of a CFCA action requires the Court to provide its "written consent" to the settlement after having considered (1) the "best interests of the parties involved" and (2) the "public purposes behind" the CFCA. (Gov't Code § 12652(c)(1).)

The plain reading of the above-quoted text of the CFCA appears to require the "written consent of the . . . Attorney General or prosecuting authority of a political subdivision, or both" prior to approval of any dismissal, including dismissal pursuant to a settlement agreement. The Court hereby incorporates by reference its discussion of that issue in an Order dated 4/27/18 (ROA No. 582 at 3-4, concluding that the Attorney General's "written consent" is not required for approval of a settlement, but that if the Attorney General files and objection to the settlement, the Court must consider the objection).)

**Discussion**

***(1) The Proof Of Service for The Instant Motion Does Not Reflect Notice To Individual Non-Intervenors; The Court Finds No Prejudice For the Reasons Stated Below***

The Proof of Service (ROA No. 976) for the instant motion reflects service of the Notice of Motion and Motion upon Defendants and upon the Intervenors, as well as upon Non-Intervenor and interested party the State of California. But there is no indication that the many Non-Intervenors (both customers and non-customers of Sprint) were served with notice of this hearing, even though some of them (i.e., the Non-Intervenor Customers) stand to receive funds under the Settlement Agreement.

However, the Court notes that in filing the motion, the qui tam plaintiff is technically acting on behalf of all Non-Intervenors. Government Code § 12652(f)(1) provides that, insofar as the qui tam plaintiff prosecutes the action on behalf of the Non-Intervenors, the qui tam plaintiff "shall have the same right to conduct the action as the Attorney General or prosecuting authority would have had if it had chosen to proceed . . . [and] [i]f the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts." (Gov't Code § 12652(f)(1) (emphasis added).) **The Court construes the fact that the Proof of Service (ROA No. 976) does not list any Non-Intervenors (aside from the State of California) as having been served with notice of the instant motion as apparently reflecting that no other Non-Intervenors have requested that they be served with filings in connection with this action. If this is incorrect, moving parties shall be prepared to address this matter during the hearing.**

Moreover, in any event, concerns about all interested parties obtaining notice and an opportunity to be heard regarding the terms of the proposed settlement are alleviated by virtue of the moving parties' proposed procedure for giving notice of the Final Settlement Approval Hearing. The procedure will give all Non-Intervenor entities a meaningful opportunity to raise any objections prior to final approval, as described further below.

As such, the failure to serve the instant Notice of Motion and Motion on each Non-Intervenor will not result in prejudice to any interested entity.

***(2) Proposed Procedure: Preliminary Approval Hearing (i.e., Hearing on the Instant Motion) Followed By Final Settlement Approval Hearing After Notice Period***

Moving parties propose service of a Notice of Proposed Settlement and Final Approval Hearing, giving all parties (including Non-Intervenors) the opportunity to be heard regarding the Amended Settlement, and a Final Approval Hearing.

The Court hereby approves the suggested procedure, which approximates the procedure often used in class action settlements. While this is not a class action, the Court finds that the proposed Settlement Agreement potentially impacts hundreds of interested absentee parties and therefore warrants using a procedure similar to those commonly used to protect the interests of such parties.

The Court hereby approves moving parties' proposed procedure, and hereby sets a **final settlement approval hearing** in Department 92 at 1:30 p.m. on **March 17, 2020**. With this final settlement approval hearing date, any opposition to final settlement approval would be due **March 4, 2020**. These deadlines shall be incorporated in the Notices to be served on all Non-Intervenors.

***(3) Service of Notice of Final Approval Hearing on Non-Intervenor Customers***

Moving parties propose service of a "Notice of Proposed Settlement" on the Non Intervenor Customers. (P&As at 8.) Moving parties have agreed on a proposed form for this notice, as well as on a proposed form for a Consent and Release by Non-Intervenors. (Exh. B to Hartman Decl.) The Court hereby approves this form of notice attached as part of Exhibit B to the Hartman Declaration and the procedure for Non-Intervenor Customers to join in the settlement. The mailing shall be made within 14 days of this Court's order preliminarily approving the settlement.

The Non-Intervenor Customer Notice will be mailed together with all papers submitted in support of this Motion for Preliminary Approval and the Court's order on this motion. (P&As at 8.) The Non-Intervenor Customer Notice instructs the entities regarding the means to return their executed consent. Ninety (90) days are provided for return of the consent, on February 18, 2020. This time period will allow the government entities time to have counsel review the provisions of the settlement agreement, and for the governmental decision-makers to secure any necessary approvals. (P&As at 8 ("In the experience of Plaintiffs' counsel, who have represented hundreds of governmental entities in similar multi-entity litigation under the CFCA, a time period of this length is required for governmental entities to determine whether to opt in to the settlement.").)

***(4) Service of Final Approval Hearing on Non-Intervenor Non-Customers***

Moving parties argue that, in contrast to service on the Non-Intervenor Customers, service of hard-copy papers on the 104 Non-Intervenor Non-Customers is not necessary. (P&As at 8.) The Non-Intervenor Non-Customers are not parties to the settlement and are not bound by the releases therein.

The Court agrees that there is a workable alternative to serving hundreds of pages of motion papers and exhibits on the Non-Intervenor Non-Customers. The Court hereby approves moving parties' proposal to serve, on all Non-Intervenor Non-Customers, a short notice document, "informing them of the date for the final settlement hearing and deadline for objections, with directions to a webpage from which they can download the complete service packet, and contact information for counsel." (P&As at 8.) The Court hereby approves the proposed form of notice to Non-Intervenor Non-Customers attached as part of Exhibit B to the Hartman Declaration.

The Notice to Non-Intervenor Non-Customers shall be mail-served on the same day the Notice to Non-Intervenor Customers is mail-served.

***(5) Whether Amended Settlement Is In Best Interests of Intervenors and Non-Intervenors***

A relator may release CFCA claims only as "part of a court approved settlement." (Cal. Gov't Code § 12652(c)(1).) The Court must determine whether dismissal-and, accordingly, the settlement-is in (1) the "best interests of the parties involved" and (2) serves the "public purposes behind" the CFCA. (Gov't Code § 12652(c)(1); *see also San Francisco Unified School Dist. ex rel. Contreras v. Laidlaw Transit, Inc.* (2010) 182 Cal.App.4th 438, 446 ("The Legislature designed the CFCA to prevent fraud on the public treasury, and it should be given the broadest possible construction consistent with that purpose." (internal quotation marks omitted)); *State of California ex rel. Bowen v. Bank of America*

*Corp. et al.* (2005) 126 Cal.App.4th 225, 236 ("The ultimate purpose of the [CFCA] is to protect the public fisc."); *American Contract Services v. Allied Mold & Die, Inc.* (2001) 94 Cal.App.4th 854, 858 (same); *State of California ex rel. Standard Elevator Co., Inc. v. West Bay Builders, Inc.* (2011) 197 Cal.App.4th 963, 973 (one purpose of the CFCA is to "encourage insiders to come forward with such information where they would otherwise have little incentive to do so.")

Here, like the other Defendants, Sprint has denied liability and has alleged affirmative defenses. (P&As at 3.) According to the moving papers, "Sprint has a smaller market share than the remaining defendants, AT&T and Verizon, and, with many of the government customers it did have, Sprint served as an alternate wireless services provider, not a primary provider." (P&As at 4.) "In January 2017, Plaintiffs and Sprint jointly identified 200 government customers -- 35 Intervenor and 165 Non-Intervenor -- that had obtained wireless services from Sprint." (*Id.* (citing Jt. Status Conf. Stmt. for January 13, 2017 Conf., and Ex. B thereto; ROA No. 336 and 337).) As discovery proceeded, the parties developed evidence about Sprint revenue under the relevant contracts. (*Id.*) "Based on Plaintiffs' analysis, Sprint's damages are a fraction of the damages caused by the remaining defendants' conduct." (*Id.*)

"Given Sprint's comparatively small sales under the relevant contracts, the burdens of litigation in the context of a case between parties who have far more at stake, and the litigation risks faced by both sides, Sprint and Plaintiffs agreed to discuss settlement." (P&As at 6.)

#### ***(6.a) Only Entities That Affirmatively Opt In To Amended Settlement Will Be Bound By It***

According to the moving papers, the instant Settlement Agreement is intended to be binding only upon those entities that affirmatively and expressly agree to be bound by it. According to the moving papers (P&As at 9-10), the Settlement Agreement provides that only those entities that expressly agree to be bound by its terms are deemed "parties" to the settlement. (Hartman Decl. Ex. F ¶ 15.) Moving parties represent that Sprint, Relator, and Intervenor have all agreed to be bound by the Settlement Agreement. (P&As at 9.)

Moving parties represent that the Non-Intervenor are not parties to the Settlement Agreement, but may choose to become parties by expressly consenting to the terms of the Settlement Agreement in the form of a signed "Consent and Release by Non Intervenor." (Hartman Decl. Ex. F ¶ 29.) Those who execute such a Consent and Release become parties to the Settlement Agreement as "Consenting Non-Intervenor" and will receive their full settlement allocation, as described in more detail below. Those who do not execute such a Consent and Release are referred to as Non-Consenting Non-Intervenor. Non-Consenting Non-Intervenor -- including all Non-Intervenor Non-Customers -- are not parties to the Amended Settlement. (P&As at 9-10.)

Accordingly, the Court preliminarily finds that the Settlement Agreement requires parties to "opt in" before being bound by it, such that it is therefore fundamentally fair, reasonable, in the best interests of the parties, and in furtherance of the purposes of CFCA.

#### ***(6.b) Releases In Amended Settlement Are Consistent With CFCA***

The Court's tentative ruling on a previous Motion to Approve Settlement between different parties (namely, between Plaintiffs and T-Mobile) explained that the Court shared the AG's concerns about the Relator using the proposed "CFCA settlement to release non-CFCA claims on behalf of Non-Intervenor." (Ruling dated 4/27/18 at 6-9.) That ruling noted that the "moving papers did not identify any authorities that would permit a Relator to settle and release non-CFCA claims on behalf of Non-Intervenor.

Here, moving parties' agreement with respect to the releases of claims do not pose that problem. (P&As at 10.) Moving parties represent that Paragraph 23 of the Settlement Agreement states that the release is limited to those claims that Relator has the authority to release, and does not include a release of claims by Non-Consenting Non-Intervenors — "California entities who are not parties to this Agreement" -- except for the CFCA claims, "the specific claims Plaintiffs asserted . . . under Government Code section 12651(a) in the Civil Action." (Hartman Decl. Exh. F ¶ 29(b).) Moving parties represent that this release of CFCA claims on behalf of Non-Intervenors is authorized by the CFCA. (P&As at 10 (citing Cal. Gov't Code § 12652(c)(1)).)

Moving parties also represent that, the Settlement Agreement clarifies that the releases "expressly do not encompass claims not arising out of and not in any way connected to the Covered Conduct," (Hartman Dec. Exh. F ¶ 23(a)) and enumerates specific categories of potential reserved claims. (P&As at 10.)

Accordingly, the Court preliminarily finds that the Settlement does not purport to release non-CFCA claims of Non-Intervenor entities that have not expressly opted into the agreement, such that it is therefore fundamentally fair, reasonable, in the best interests of the parties, and in furtherance of the purposes of CFCA.

#### ***(6.c) Proposed Pro Rata Settlement Allocation Among Sprint Customers***

As to Intervenor Customers of Sprint: the moving papers represent that "thirty-one Intervenor will sign the Settlement Agreement and participate as full parties." (P&As at 1.)

As to Non-Intervenor Customers of Sprint: the moving papers represent that "[t]here are 172 Non-Intervenor Customers, including the State of California, that are allocated funds under the Settlement Agreement." (P&As at 1.) Any Non-Intervenor Customer of Sprint that expressly opts in to the settlement (as discussed above herein) "will receive its full settlement allocation." (P&As at 1-2.) Those Non-Intervenor Customers of Sprint that do not expressly opt in will receive "only 90% of their settlement allocation." (P&As at 1.)

As to Non-Intervenor Non-Customers of Sprint: the moving papers represent that "[t]here are 104 Non-Intervenors named in the complaint who were not customers of Sprint. . . [they] are not allocated any share of the settlement under the original or amended settlement; they have no damages." (P&As at 2.)

According to the moving papers, "each government entity's share of purchases made from Sprint under the contracts, as reflected in the revenue data provided by Sprint, is the basis of its settlement allocation." (P&As at 11; Hartman Dec. Exh. A.) The Court agrees that apportioning each entity's settlement amount relative to the entity's spending on Sprint services under the contracts is a fair and objective method that compensates all affected entities equitably.

The moving papers explain that "the Allocation Plan assigns to 25 Intervenor Customers 25% of compensatory damages (\$2.3 million), because they account for 25% of the underlying sales, and the remaining 75% (\$6.9 million) to 172 Non-Intervenor Customers who account for the remaining 75% of the sales. The remaining Intervenor and Non-Intervenors did not procure wireless services from Sprint under the contracts and therefore receive nothing in the settlement allocation. The Allocation Plan distributes the settlement proceeds fairly and transparently, using the best available information on the value of the purchasing government entities' claims." (P&As at 11.)

The Proposed Settlement Allocation ("Allocation Plan") is attached as Exhibit A to the Hartman Declaration. Under the Allocation Plan, the settlement funds are apportioned on a pro rata basis



relative to each government entity's spending on Sprint's services as reflected in the data Sprint provided. (Hartman Decl. ¶¶ 2, 10, Exh. A.) Sprint's data is the basis for allocating the settlement payment among Plaintiffs — both Intervenor and Non-Intervenor — in shares proportionate to each entity's Sprint spending. (According to the moving papers, Sprint filed this data, with redactions to exclude revenue numbers from each entity. (Hartman Decl. ¶ 2.) (The redacted materials are the subject of a Motion to Seal, discussed below.)

The Court preliminarily finds that the proposed pro rata settlement allocation among Sprint Customers is fair and reasonable.

#### ***(7) Proposed Reduced Settlement Allocation for Non-Consenting Non-Intervenor***

According to the moving papers,

The parties recognize that some Non-Intervenor Customers will not return the Consent and Release. The parties agree that such Non-Consenting Non-Intervenor Customers should still receive a settlement allocation. Relator pursued CFCA claims on their behalf, and has secured a recovery on their behalf Non-Consenting Non-Intervenor Customers will, however, be differently situated than Intervenor and Consenting Non-Intervenor Customers. Intervenor and Consenting Non-Intervenor Customers have agreed to release Sprint from "any and all claims . . . arising out of or in any way connected with the Covered Conduct." (Hartman Dec. Exh. F ¶ 21; as more fully set forth therein). Non-Consenting Non-Intervenor, by contrast, will be bound only by the release of the specific CFCA claims. Because of this, the parties have agreed that their settlement allocation should be reduced by 10%. Amounts remaining after reductions in settlement allocations to Non-Consenting Non-Intervenor will be reallocated among Intervenor and Consenting Non-Intervenor, in proportion to each such entity's share of the settlement. Plaintiffs will provide a full accounting of the allocations after the deadline for Non-Intervenor to opt in and in advance of the final settlement hearing.

(P&As at 11-12.)

The Court finds the foregoing to be fair, reasonable, and in furtherance of the goals of the CFCA.

#### ***(8) Relator's Share of Intervenor's Proceeds***

The CFCA entitles the qui tam plaintiff to a percentage share in the Intervenor's recoveries under the settlement. (See Gov't Code § 12652(g)(2) (from Intervenor, qui tam plaintiff shall receive ". . . at least 15 percent but not more than 33 percent of the . . . settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action . . . .") (emphasis added).)

Here, Relator seeks to receive a 25% allocation of the Intervenor's gross settlement allocation of \$2,309,793, which amounts to \$577,446. (Exh. A to Hartman Decl.) Intervenor have agreed to fix the Relator's share at 25% of their recoveries, pursuant to Government Code § 12652(g)(2). (Hartman Decl. ¶ 59.) Intervenor have also agreed to compensate lead counsel to represent them in this matter by paying lead counsel 8% of their proceeds from the settlement. (Hartman Decl. ¶ 60.)

Federal district court cases have analyzed various factors to determine a relator's percentage share of proceeds in cases under the Federal False Claims Act (31 U.S.C. § 3729 et seq.). (P&As at 13-14 (citing cases).) Courts have considered various factors including, but not limited to, (1) the significance of the information the relator provided to the government; (2) whether the government would ever have known about the FCA violation but for the information or documents the relator provided; (3) whether the relator's complaint exposed a widespread scheme; (4) whether the relator cooperated with the government and its investigation; (5) the contribution of the relator's counsel; and (6) whether the relator and relator's counsel performed work that was helpful to settlement negotiations or helped to negotiate a settlement. (P&As at 19-20 (citing cases, including *United States ex rel. Shea v. Verizon Communications* (D.D.C Feb. 23, 2012) 844 F.Supp.2d 78, 82-88).) A relator's expertise in the technical aspects of this case and its active involvement in the litigation may justify a higher percentage allocation to the relator. (See e.g., *United States ex rel. Pratt v. Alliant Techsystems* (C.D. Cal. 1999) 50 F.Supp.2d 942, 948 ("The allocation of the FCA settlement amount between [relator], the government, and counsel appears to be fair and reasonable, given the extensive investigative assistance to DCIS and DOJ in their respective investigations. Indeed, as DOJ recognizes, the relator even worked personally with DCIS to record conversations and to transcribe the tapes. Therefore, the relator's active involvement in this case, coupled with his specific efforts to cooperate with the government and to further its investigation, justify both the allocation of 28 percent of the FCA proceeds to the relator - well within the 25 to 30 percent authorized by statute [federal False Claims Act] - and the allocation of \$150,000 for attorney fees.").)

Here, the moving papers (P&As at 12-17) argue that the qui tam plaintiff (Relator OTG) has had "extensive" participation in this action (P&As at 14), including but not limited to helping the government identify the contracts with the Defendants that required the Defendants to provide rate-plan optimization, and gathering contract documents and analyzing them to understand the operation of agreements that consist of at least six sources of interrelated provisions. (Hartman Decl. ¶¶ 61-65.) "The Relator also demonstrated that Defendants failed to provide rate-plan optimization," by bringing to bear "years of experience in the field of telecommunications expense management to show that Defendants did not produce genuine rate-plan optimization reports," including experiencing Defendant producing reports to customers bearing the name "rate plan optimization reports" even though real optimization reports required specific elements that Defendants' reports lacked. (Hartman Decl. ¶ 63.) Relator and its counsel also evaluated the claims of many California government entities, reviewing their records and interviewing their employees. (Hartman Decl. ¶ 63.) Relator's investigation revealed the same conduct affecting the governments of several other States. (Hartman Decl. ¶¶ 64-65.)

The Court finds that a 25% allocation (of \$577,446) from the Intervenor's gross settlement allocation of \$2,309,793 falls within the 15% to 33% range required by Government Code § 12652(g)(2), and adequately compensates OTG given the extent that OTG substantially contributed to the prosecution of the action. OTG's technical expertise and active involvement in the litigation and investigation supports the allocation. [The Court notes that Intervenor's agreements in these respects result in Intervenor each giving up 33% of their allocations under the Settlement Agreement, either to the Relator directly or to the Relator's counsel. However, because Government Code § 12652(g)(2) permits the qui tam plaintiff to recover up to 33% of the proceeds of the settlement, the Court finds the agreements do not run afoul of the limit Section 12652(g)(2) effectively puts on the amount an Intervenor can yield to the Relator.]

Accordingly, the Court hereby preliminarily approves OTG's proposed allocation of 25% of the Intervenor's gross settlement allocation.

#### **(9) Relator's Share of Non-Intervenor's Proceeds**

The CFCA entitles Relator to a percentage share in the *Non-Intervenors'* recoveries under the settlement. (See Gov't Code § 12652(g)(3) (from *Non-Intervenors*, qui tam plaintiff shall receive "an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than 25 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of these proceeds.") (emphasis added).)

Here, Relator's moving papers seek to receive 45% from the *Non-Intervenors'* gross settlement allocation of \$6,910,597.00, i.e., \$3,109,769.00. (P&As at 12-17; Exh. A to Hartman Decl. at 5.)

The moving papers refer to the Court's prior analysis of the T-Mobile settlement, "Relator and counsel litigated this matter against Sprint for eighteen months longer than they litigated against T-Mobile, for which a 40% non-intervenor relator share was awarded. This additional litigation required Relator to expend substantial additional resources, and incurring substantial additional risks. For example, Relator's counsel took or defended seven depositions related to Sprint during this additional time period, and spent hundreds of hours analyzing Sprint billing, usage, and rate plan data." (Hartman Dec. ¶ 5.)

The AG has objected to the instant motion. The AG asserts that the Relator's request for 45% of the *Non-Intervenors'* settlement allocation is unwarranted and excessive relative to the amount obtained for California entities and political subdivisions by way of the settlement. (Opp'n at 4-6.) The AG argues that "[a]n award of 45 percent, which is but a stone's throw from the statutory maximum, should be reserved only for cases where the relator secured substantial settlements, took the case to trial, and undertook prolonged and significant discovery." (Opp'n at 6 (citing cases).)

According to the AG's Opposition, Relator did not obtain "significant results" in terms of damages for California by way of this settlement with Sprint. (Opp'n at 3.) The AG urges the Court to consider whether the proposed share to the Relator is "reasonable for collecting the civil penalty and damages on behalf of the government." (*Id.* (citing *U.S. ex rel. Bibby et al., v. Wells Fargo Bank, N.A.* (N.D. Ga. March 29, 2019) 369 F.Supp.3d 1346, 1352; Gov't Code § 12652(g)(3).) The AG argues that the settlement, whereby Sprint will pay \$10.5 million to settle all claims in both this action and in the Nevada action, yields just under \$4 million to the State of California. (Opp'n at 3.) The AG asserts that this amounts to only about 30% of the alleged overcharges attributed to Sprint. (*Id.*) In comparison, the AG asserts that the T-Mobile settlement yielded the State of California an approximate 67% of the alleged overcharges attributed to T-Mobile. (*Id.*) "In comparing the two settlements, it is hardly reasonable for [Relator] to take a larger percentage of California's recovery from Sprint than [Relator] took from the T-Mobile Settlement." (*Id.* at 3-4.) Further, no penalties were recovered, even though they are mandatorily trebled under the CFCA. (*Id.* at 4 n.1) Finally, even though Relator and its counsel engaged in significant discovery efforts, the AG asserts that these do not warrant a 45% allocation here. (*Id.* at 4.)

In the Reply, Plaintiffs represent that after having reviewed the AG's Opposition and met and conferred with the AG, both sides now agree that a 42% allocation is warranted here. Plaintiffs now represent that a 42% allocation — instead of the originally-requested 45% allocation — would be appropriate because it accounts for the significant results the settlement achieves on behalf of the political subdivisions involved here, even if the settlement achieves relatively lesser "results" for the State of California. (Reply at 1-2.) According to the Reply, the "tremendous amount of work the intervenors and counsel have devoted to pursuing the non-intervening political subdivisions' claims justifies Plaintiffs' request for a larger share of their recoveries than the percentage that Plaintiffs and the AG[] have agreed is appropriate with respect to the State of California's recovery." (Reply at 1.) The AG and Plaintiffs agree that a 42% allocation would properly account for the results across all Plaintiff entities, i.e., both State of California entities as well as political subdivisions. (Reply at 1-2.)

The Court agrees that, for the reasons stated in the Reply, a 42% allocation is warranted here. A 42% allocation is more appropriate than the originally-requested 45% allocation. The Court seeks to avoid granting Relator a windfall at the expense of the public fisc, and every dollar routed to the Relator is a dollar taken from an entity allegedly damaged by overcharges. Although Relator and its counsel investigated the case, initiated document discovery, analyzed records, retained expert witnesses, and the like, accepting these general tasks as the basis for an award just short of the statutory maximum risks rendering the 25% floor of Section 12652(g)(3) meaningless. With the exception of analyzing the settling defendant's records, Relator would have taken the same litigation steps in furtherance of the action against the remaining Defendants, such that Relator did not truly earn a near-maximum share of Non-Intervenor recoveries from the settling defendant.

And while Relator and counsel litigated for eighteen months longer than they litigated against T-Mobile, and took or defended seven depositions related to Sprint and analyzed Sprint-related evidence, the Court is not persuaded that this warrants a near-maximum 45% allocation here.

Having considered the Relator's active role in the litigation as recounted in the moving papers, and having considered all the facts and circumstances before it, the Court preliminarily finds that the Relator is entitled to receive 42% from the Non-Intervenors' gross settlement allocation of \$6,910,597.00, i.e., \$2,902,451.00. The Court finds this percentage to be reasonable in consideration of the Relator's technical expertise and extensive role in the litigation and investigation, while remaining cognizant of the goal of preventing a windfall to OTG at the expense of the public fisc, and the fact that the bulk of OTG's litigation work consisted largely of propounding discovery that it would have had to propound anyway (given the involvement of the non-settling Defendants). Much of the early work in this case was done on behalf of all defendants.

(On the Court's calculation, the originally-requested 45% allocation would yield \$3,109,769 for all non-intervenors to the Relator, and the approved, agreed upon percentage of 42% would yield \$2,902,451.00 to the Relator. The difference between these yields is \$207,318.00.)

Accordingly, the Court preliminarily finds that the Relator is entitled to receive 42% from the Non-Intervenors' gross settlement allocation of \$6,910,597.00, i.e., \$2,902,451.00.

#### ***(10) Relator's Request for \$2,000,000 in Attorneys' Fees and Costs***

If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subdivision (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(Gov't Code § 12652(g)(8) (emphasis added).)

Here, the Allocation Plan designates \$2,000,000 to be paid to OTG's counsel for work pursuing claims against Sprint on behalf of OTG, the Intervenor, and the Non-Intervenors. (P&As at 17-21; Exh. E to Hartman Decl.) According to the moving papers, lead counsel in the claims against Sprint incurred 38,601 hours that equate to attorney fees of \$21.44 million at present rates. (Hartman Dec. ¶¶ 50-54) Lead counsel's \$2,000,000 fee settlement therefore amounts to less than 10% of lead counsel's actual fees incurred in this case. (P&As at 20.) Also according to the moving papers, this litigation has also required a substantial investment of costs, which Plaintiffs' counsel has advanced and must look to the settlement to recover them. Through February 28, 2019, plaintiffs' counsel had advanced costs of \$4,386,587. (Hartman Dec. ¶ 57.) The moving papers assert that accounting for

recovery of advanced costs greatly increases the discount on attorneys' fees in the fee settlement. (P&As at 20.)

Because the Court has determined that OTG is entitled to a fee award, the Court must next determine the amount of that award. The Court has "broad authority to determine the amount of a reasonable fee." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (*Id.*) "The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." (*Id.* at 1096.)

Here, OTG's counsel Anne Hartman describes the relevant work performed, the hours worked, the basis for the hourly fees of each professional, and the expenses incurred. (Hartman Dec. ¶¶ 12-58.) As to the attorney fees incurred, Plaintiffs seek fees for two time periods: first, work performed before Plaintiff and T-Mobile settled (the "four defendant period"); and, second, work performed thereafter. (P&As at 19-21; Hartman Decl. ¶¶ 50-53.)

Moving parties represent that counsel's efforts to prosecute the claims against the Defendants is not divisible on a defendant-by-defendant basis; investigative and research efforts helped the case as a whole. (Hartman Decl. ¶ 52.)

According to moving parties, lead counsel's fees for the hours spent prosecuting the claims against Sprint are as follows:

Four-Defendant Period: 8,706 hours with total fees of \$6,198,514.  
Three-Defendant Period: 29,896 hours with total fees of \$15,238,075.

Total hours: 38,601  
Total fees: \$21,436,589

(Hartman Decl. ¶ 54.)

According to OTG, lead counsel's \$2,000,000 fee request therefore amounts to a steep discount off lead counsel's actual fees of \$21,436,589. (P&As at 19-21.) Lead counsel's effective hourly rates (Hartman Decl. ¶¶ 50-53) are reasonable. The Court finds that the attorney time purportedly spent was reasonable given all the facts and circumstances in this action, which this Court has handled since its inception.

Further, lead counsel's costs prosecuting the claims against Sprint total \$4,386,587.21. (Hartman Dec. ¶¶ 56-58.) No objections to the requested fees/costs having been filed, the Court finds that counsel's summary of incurred costs indicates that such costs were reasonable and necessary to the litigation. (Hartman Decl. ¶¶ 56-58.)

The Court finds that lead counsel's request for a negotiated settlement amount of \$2,000,000 for all fees and costs is reasonable in light of counsel's efforts prosecuting the case against Sprint.

Accordingly, the Court hereby preliminarily approves the award of \$2,000,000 in attorneys' fees as requested in the moving papers.

***Sprint's Motion to Seal Portions of Document Lodged Conditionally Under Seal***

On October 7, 2019, Sprint filed a Motion to Seal portions of Exhibit A to the Declaration of Anne Hartman, filed on September 27, 2019 in support of Plaintiffs' Motion for Preliminary Approval of Sprint Settlement. (ROA 985-86.)

No opposition to the motion to seal appears in the Court's electronic Register of Actions.

The public's "right of access to judicial records is not absolute, but must be reconciled with legitimate countervailing public or private interests." (*KNSD Channels 7/39 v. Superior Court* (1998) 63 Cal.App.4th 1200, 1203 (internal quotation marks omitted).)

A court may order records to be filed under seal if it finds: "(1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, Rule 2.550(d); *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1217-18; see also *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 297-98.)

An overriding interest may be a party's interest in protecting trade secrets or business information that does not rise to the level of a trade secret. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286 (explaining that confidential business matters relating to the business operations of a party are a proper subject for a motion to seal); *McGuan v. Endovascular Techs., Inc.* (2010) 182 Cal.App.4th 974, 988 (affirming grant of motion to seal trade secrets).

Here, Sprint argues that portions of the Exhibit reveal confidential and proprietary information relating to Sprint, and "contains information that Sprint would designate as confidential under the parties' Stipulated Protective Order in this matter." (ROA 985 at 1; ROA 986 (Declaration of Will Souder ("Souder Decl.") ¶ 5).)

Sprint seeks to seal "a five-page spreadsheet that includes Sprint revenue information, which was used to facilitate the parties' confidential settlement discussions. The spreadsheet identifies California government entities (both Intervenor and non-Intervenor) named in the Second Amended Complaint for this action, as well as other, non-California entities, that purchased wireless equipment or services from Sprint under the terms and conditions of the CWC and WSCA contracts, including the rate plans and pricing available under those contracts. Hartman Decl. ¶ 10." (ROA 985 at 5.) "The spreadsheet also provides specific revenue information compiled from Sprint's billing records for each entity through December 31, 2018. *Id.* This revenue data is sensitive and confidential, and Sprint takes great efforts to maintain the secrecy of this information. This revenue information, and the billing records it derives from, can only be accessed by certain personnel on a restricted basis. Souder Decl. ¶ 7." (ROA 985 at 5.)

Further, Sprint argues that "[p]ublic disclosure of this revenue information would competitively harm Sprint. *Id.* ¶ 8. Specifically, disclosure of this information would cause competitive harm to Sprint by providing insight to Sprint's competitors and customers about Sprint's revenues and pricing relationships with its purchasers, as well as Sprint's public sector pricing strategies. *Id.* ¶¶ 7-8." (ROA 985 at 5.) "Competitors could use this information to focus their marketing efforts on particular Sprint customers or to undercut Sprint's pricing, and otherwise attempt to gain leverage against Sprint. *Id.* ¶ 8. Further, this revenue information was shared during the parties' confidential settlement discussions for the sole purpose of finalizing their settlement. See *id.* ¶ 15." (ROA 985 at 5.) "If Sprint were compelled to make its confidential revenue information available to the public, that may well undermine the public policy favoring settling litigation by deterring other defendants from participating in settlement negotiations or agreeing to settle." (ROA 985 at 5.)

No showing having been made to the contrary, pursuant to California Rule of Court 2.550(d) and (e), the Court finds that the privacy interests of Sprint overcome the right of public access to the information, that such interest supports sealing, that there is a substantial probability that the interest will be prejudiced without sealing, that the sealing is narrowly tailored, and that there is no less restrictive means to achieve the overriding interest.

Sprint's instant Motion to Seal is GRANTED, such that Exhibit A to the Declaration of Anne Hartman (lodged conditionally under seal with the Court on September 27, 2019 in support of Plaintiffs' Motion for Preliminary Approval of Sprint Settlement), which contains unredacted revenue information, is hereby ordered SEALED.

***AG Filed Redacted Materials In Support Of Its Opposition***

The AG's Opposition memorandum contained redactions and attached redacted exhibits. The AG's Opposition itself, and the Declaration of Kenny V. Nguyen filed with that Opposition, both contain redactions.

In the AG's Notice of Lodging of Unredacted Documents, the AG stated that it was provisionally lodging under seal unredacted materials produced during discovery that Sprint and T-Mobile had designated as confidential pursuant to the parties' Protective Order. (ROA 943.) According to the Notice, the AG purportedly does "not intend to request to have such records sealed," and the Notice constitutes written warning to Sprint and T-Mobile that the materials will be placed in the public court file unless Sprint and T-Mobile file a timely motion or application to seal the records pursuant to Rule of Court 2.551(b)(3)(A)(iii).

A request to seal the records was filed by Sprint on Monday, November 4, 2019, with a requested hearing date of December 6, 2019. At the hearing on November 6<sup>th</sup>, counsel for Plaintiffs, Sprint, and the AG stipulated to the documents remaining under seal.

Accordingly, the documents shall remain under seal.

***Conclusion***

Given the foregoing, the Court preliminarily finds, subject to the final approval hearing, that the Settlement Agreement is fair, reasonable, in the best interests of the parties involved, and in furtherance of the public purposes behind the CFCA.

Plaintiffs shall submit a Proposed Order as a complete stand-alone document, with all blanks filled in, consistent with the foregoing and consistent with the draft Preliminary Approval Order text attached to the Hartman Declaration as part of Exhibit F.

**IT IS SO ORDERED.**

Dated: November 12, 2019

Judy Holzer Hershey  
Honorable JUDY HOLZER HERSHER, JUDGE  
Superior Court of California,  
County of Sacramento

**CERTIFICATE OF SERVICE**  
**(C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California. Or, in the alternative, emailed a copy to each party or counsel of record.

*HONORABLE FRED MORRISON*  
**JAMS DISCOVERY REFEREE**  
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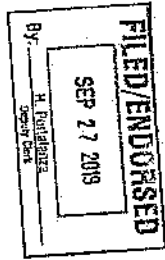
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Dated: November 12, 2019

Julie Jackson,  
Clerk  
County of Sacramento  
Superior Court of California





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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 18 FOR THE COUNTY OF SACRAMENTO  
 19  
 20 STATE OF CALIFORNIA et al, ex rel. OnTheGo  
 21 Wireless, LLC  
 22  
 23 vs.  
 24 Plaintiffs,  
 25  
 26 CELCO PARTNERSHIP, doing business as  
 27 VERIZON WIRELESS, et al.  
 28 Defendants.

Case No. 34-2012-00127517  
 NOTICE OF MOTION AND MOTION  
 FOR PRELIMINARY APPROVAL OF  
 SETTLEMENT WITH SPRINT  
 DEFENDANTS; MEMORANDUM OF  
 POINTS & AUTHORITIES  
 Date: November 6, 2019  
 Time: 1:30 p.m.  
 Dept. 92, Hon. Judy Holzer Herber  
 BY FAX

Case No. 34-2012-00127517  
 MOTION FOR PRELIMINARY APPROVAL OF SPRINT SETTLEMENT  
 458791v.4

1 NOTICE OF MOTION AND MOTION  
 2 TO ALL PARTIES AND REAL PARTIES IN INTEREST: PLEASE TAKE NOTICE  
 3 THAT on Wednesday, November 6, 2019, at 1:30 p.m., or as soon thereafter as the matter may be  
 4 heard, in Department 92 of the above-captioned court, located at 9605 Kiefer Boulevard in  
 5 Sacramento, California, Plaintiff-Relator OnTheGo Wireless, LLC ("the Relator" or "OTG") and  
 6 intervening parties the Regents of the University of California, City of Chino, City of Corona, City  
 7 of Fontana, City of Fresno, City of Long Beach, City of Oxnard, City of Rancho Cucamonga, City of  
 8 Ripon, City of Riverside, City of Sacramento, City of San Bernardino, City of San Marco, City of  
 9 Santa Rosa, City of Yreka, Los Angeles County, Marin County, Orange County, Riverside County,  
 10 Sacramento County, San Bernardino County, Santa Cruz County, Sonoma County, Stanislaus  
 11 County, Yuba County, San Diego Unified School District, Santa Ana Unified School District,  
 12 Sonoma County Water Agency, Woodbridge Fire District, and the Board of Trustees of the  
 13 California State University ("Intervenor" and collectively with Relator, "Plaintiffs") will and  
 14 hereby do move for an order 1) preliminarily approving a) the settlement with Nextel West Corp. (as  
 15 successor to Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications) and Sprint  
 16 Solutions, Inc. (collectively, "Sprint"), pursuant to a settlement agreement between the parties and  
 17 California Government Code section 12652(c)(1); b) the procedures for notice to Non-Intervenor;  
 18 c) the allocation of settlement amounts among the Intervenor, the Non-Intervenor, the Relator, and  
 19 the Relator's counsel; and 2) setting a hearing for final approval.  
 20 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and  
 21 Authorities, and the Declaration of Anne Hayes Hartman submitted herewith.  
 22 Dated: September 27, 2019  
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Case No. 34-2012-00127517  
 MOTION FOR PRELIMINARY APPROVAL OF SPRINT SETTLEMENT  
 458791v.4

By:   
 Anne Hayes Hartman  
 Attorneys for Plaintiffs

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TABLE OF AUTHORITIES

1	Cases		
2	<i>American Contract Services v. Allied Mold &amp; Die, Inc.</i>	94 Cal. App. 4th 884 (2001)	9, 12
3	<i>Blackwell v. Coley</i>	724 F. Supp. 2d 1068 (N.D. Cal. 2010)	19
4	<i>Christian Research Inst. v. Aber</i>	165 Cal. App. 4th 1315 (2008)	18
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7	<i>Missouri v. Jenkins by Amel</i>	491 U.S. 274 (1989)	19
8	<i>Bathine Data Corp. v. Bartenstehel</i>	175 Cal. App. 4th 1363 (2009)	18
9	<i>State of California ex rel. Bowen v. Bank of America Corp. et al.</i>	126 Cal. App. 4th 225 (2005)	9
10	<i>Sears Properties, III, Inc. v. Rankin</i>	226 Cal. App. 4th 691 (2014)	18
11	<i>United States ex rel. Alderson v. Quantum Health GP.</i>	171 F. Supp. 2d 1323 (M.D. Fla. 2001)	14
12	<i>United States ex rel. Coneblin v. IBM Corp.</i>	992 F. Supp. 137 (N.D.N.Y. 1998)	14
13	<i>United States ex rel. Johnson-Pachard v. Rapid City Reg'l Hosp.</i>	252 F. Supp. 2d 892 (D.S.D. 2003)	13, 14
14	<i>United States ex rel. Matena v. Simulinkline Bechtam Corp.</i>	114 F. Supp. 2d 352 (E.D. Pa. 2000)	13
15	<i>United States ex rel. Paul v. Alliant TeleSystems</i>	50 F. Supp. 2d 949 (C.D. Cal. 1999)	14
16	<i>United States ex rel. Rulle v. Clisco Sys.</i>	2011 WL 900930 (E.D. Ark. Mar. 15, 2011)	13
17	<i>United States ex rel. Rulle v. Hoesler-Packard Co.</i>	784 F. Supp. 2d 1097 (E.D. Ark. 2011)	13, 14
18	<i>United States ex rel. Shea v. Verizon Communications</i>	844 F. Supp. 2d 78 (D.D.C. Feb. 23, 2012)	13, 14
19	<i>United States ex rel. Taxpayers Against Fraud v. General Elec. Co.</i>	808 F. Supp. 580 (S.D. Ohio 1992)	13
20	Statutes		
21	31 U.S.C. § 3750		13
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POINTS AND AUTHORITIES

1 INTRODUCTION

2 *Qui Tam* Plaintiff OnTheGo Wireless LLC ("the Relator" or "OTG") seeks an order  
3 implementing a settlement agreement that will resolve this case as to the Sprint defendants Nextel  
4 West Corp. (as successor to Nextel of California, Inc. *dba* Sprint Nextel and Nextel  
5 Communications) and Sprint Solutions, Inc. (collectively, "Sprint"), dismissing Sprint from the  
6 action with prejudice pursuant to the agreement of Sprint and Plaintiffs, as reflected in a Settlement  
7 and Release Agreement (the "Settlement Agreement") and Joint Stipulation of Dismissal with  
8 Prejudice. The Settlement Agreement covers common-law claims and claims under the California  
9 False Claims Act ("CFCA"), brought by Relator and intervening political subdivisions  
10 ("Intervenors"), as well as CFCA claims on behalf of California government entities that did not  
11 intervene, including the State of California and other political subdivisions ("Non-Intervenors").  
12 Many of whom did not make purchases from Sprint.  
13 California entities will receive \$9.2 million in the Sprint settlement. Plaintiffs propose an  
14 allocation of settlement funds between Intervenors and Non-Intervenors in proportion to each.  
15 Government entity's relevant purchases from Sprint, as reported by Sprint. Government entities that  
16 join the settlement as parties will receive their full settlement allocation; those who do not will  
17 receive only 90% of their settlement allocation. With respect to the government entities, the  
18 Settlement Agreement recognizes three categories:  
19 *First, Intervenors*. Thirty-one Intervenors will sign the Settlement Agreement and participate  
20 as full parties.  
21 *Second, Non-Intervenor Customers of Sprint*. There are 172 Non-Intervenor Customers,  
22 including the State of California, that are allocated funds under the Settlement Agreement. The  
23 settling parties have agreed that a Non-Intervenor Customer may expressly agree in writing to be  
24 bound by the terms of the Settlement Agreement, including specifically the releases of Sprint, in  
25 which case it will receive its full settlement allocation. Non-Intervenor Customers who do not opt in  
26 will receive only 90% of their settlement allocations.  
27  
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1 *Third, Non-Intervenor Non-Customers*. There are 104 Non-Intervenors named in the

2 complaint who were not customers of Sprint during the relevant time period (but are customers of  
3 other defendant carriers). These Non-Intervenor Non-Customers are not allocated any share of the  
4 settlement under the Settlement Agreement; they have no damages. The Settlement Agreement  
5 releases *only* CFCA claims against Sprint on behalf of these Non-Intervenor Non-Customers, and  
6 not any common law or other claims.  
7 The Settlement Agreement and the requested order related to preliminary approval of the  
8 settlement include procedures for notice to Non-Intervenors, and provide a mechanism for Non-  
9 Intervenor Customers to join the Settlement Agreement as parties and receive a full settlement  
10 allocation. Preliminary approval of the settlement, including the plan for allocating the settlement  
11 funds will ensure that notice to the Non-Intervenors is meaningful.  
12 In addition to the allocations to the government entities, Relator seeks approval of a 45%  
13 relator's share with respect to recoveries by Non-Intervenors pursuant to Section 12652(a)(2) of the  
14 Government Code. This amount is consistent with the CFCA and recognizes the role of Relator in  
15 securing the recovery on behalf of Non-Intervenors.

16 The settlement is fair, reasonable, and in the best interests of the parties. A final settlement  
17 approval hearing after notice to Non-Intervenors will provide a clear procedure for any objections by  
18 Non-Intervenors who do not receive notice of this motion for preliminary approval. If no objections  
19 are received, or after resolution of such objections, the Court may enter an order approving the  
20 settlement and settlement allocations based on settlement joiners received.

21 II. STATEMENT OF FACTS

22 A. Plaintiffs allege Sprint and other Defendants failed to provide wireless services to  
23 California government customers at the "lowest cost available."  
24 The Relator filed this case, *State of California, Regents of the University of California, et al.*  
25 *et rel. OnTheGo Wireless, LLC v. Celco Partnership dba Verizon Wireless, et al.*, in 2012 under  
26 the *qui tam* provisions of the California False Claims Act ("the CFCA"), Cal. Gov't Code § 2650, *et*  
27 *seq.*, on behalf of the State of California and nearly 300 California political subdivisions who  
28

1 purchased wireless services from the four largest wireless service providers – AT&T, Sprint,  
2 Verizon, and T-Mobile (collectively, “Defendants”). OTG alleges that Defendants contracted to  
3 deliver – and then knowingly failed to deliver – wireless services at the “lowest cost available” via  
4 “rate plan optimization” to California and its political subdivisions. Plaintiffs allege that Defendants  
5 knowingly breached these agreements and overcharged California government entities.  
6 As alleged in the Third Amended Complaint (“TAC”), Sprint first entered into a purchasing  
7 agreement, the California Wireless Contract (“CWC”) with the State of California in 2005. (TAC  
8 ¶ 44) Subsequently, in or around 2011, Sprint entered into a further agreement in which it is alleged  
9 to have agreed to provide the State of California, its agencies, and the political subdivisions of the  
10 state, with wireless services pursuant to the terms of an agreement that Sprint had entered into with  
11 the State of Nevada on behalf of the Western States Contracting Alliance (“WSCA”). (TAC ¶ 89)  
12 Plaintiffs allege the WSCA contract, and the corresponding contract(s) covering Sprint’s sales to  
13 California government entities, required Sprint to provide rate-plan optimization to “ensure that each  
14 subscriber is utilizing the most appropriate plan” based on the subscriber’s use of wireless services.  
15 (TAC ¶ 60) According to Plaintiffs, rate-plan optimization, if performed, would have saved the  
16 government entities 20% or more on their wireless-services costs. (TAC ¶ 153) By failing to  
17 provide rate-plan optimization on a quarterly basis, as the complaint alleges the contract required,  
18 Plaintiffs claim that Sprint and the other defendants fraudulently overbilled the government entities  
19 and failed to provide service at the lowest cost available.  
20 Sprint has denied liability, arguing, among other things, that the contracts did not have the  
21 meaning Plaintiffs alleged, that Sprint did not act with scienter, that any alleged failure to provide  
22 optimization services was not material, and that any damages would be speculative and minimal.  
23 Sprint has further alleged through affirmative defenses plead in its verified answer to the second  
24 amended complaint (ROA 316) that the government plaintiffs waived any right to recovery. (Sixth  
25 Aff. Def.) failed to mitigate their damages. (Eighth Aff. Def.) were not parties to the contracts  
26 alleged. (Eleventh Aff. Def.) and had made performance impossible. (Thirteenth Aff. Def.)  
27  
28

1 Sprint has a smaller market share than the remaining defendants, AT&T and Verizon, and,  
2 with many of the government customers it did have, Sprint served as an alternate wireless services  
3 provider, not a primary provider. In January 2017, Plaintiffs and Sprint jointly identified 200  
4 government customers – 35 Intervenor’s and 165 Non-intervenor’s – that had obtained wireless  
5 services from Sprint. (U. Status Conf. Sum. for January 13, 2017 Conf., and Exh. B thereto, ROA  
6 No. 336 and 337) As discovery proceeded, the parties developed evidence about Sprint revenue  
7 under the relevant contracts. Based on Plaintiffs’ analysis, Sprint’s damages are a fraction of the  
8 damages caused by the remaining defendants’ conduct.  
9 **B. Procedural History**  
10 OTG filed this action under the whistleblower, or *qui tam*, provisions of the CFCA.<sup>1</sup> Under  
11 this statute, any person with knowledge that a government contractor has defrauded a California  
12 government entity may sue in the entity’s name. If the action is successful, and money is recovered,  
13 from the defendant, the *qui tam* plaintiff, or the relator, may share in a portion of that recovery. The  
14 victim entity may choose to intervene and take over primary responsibility for the case, or it may  
15 elect to allow the relator to litigate on its behalf. If the agency intervenes, the CFCA entitles the  
16 relator to 15 to 23 percent of the entity’s recovery. If the government entity declines to intervene,  
17 the statute entitles the relator to 25 to 50 percent of any recovery, the larger share reflecting the  
18 relator’s greater contribution to the outcome. A government entity that declines to intervene is not a  
19 full “party” to the action, but it does remain a “real party in interest” and receives at least half of any  
20 recovery.  
21 In December 2015, 45 government entities on whose behalf OTG sued intervened in the  
22 action and, in addition, brought additional common-law claims for breach of contract, unfair  
23 business practices, and unjust enrichment.<sup>2</sup> The Intervenor’s include the Regents of the University of  
24 California.  
25 In addition to this action, Sprint is also a defendant in a case pending in Nevada, *State of Nevada et al. et  
26 al. On The Go Wireless v. Cellco Partnership et al.*, 2d Judicial District Washoe County Case No. CV12-  
27 023093, filed December 12, 2012 (the “Nevada Action”). The State of Nevada filed a complaint in  
28 intervention in that action on February 27, 2019.  
29 One of those intervenors, the Trustees of the California State University, intervened in the lawsuit as to the  
30 common-law claims only.  
31  
32



1 California, the Trustees of the California State University, the County of Sacramento, the City of  
 2 Sacramento, and dozens of other local government entities. Two-hundred and sixty-four remaining  
 3 government entities on whose behalf OTG sued did not intervene. Instead, these “Non-Intervenor”  
 4 relied on OTG to prosecute their claims.<sup>3</sup>  
 5 The parties actively litigated this case since its inception nearly seven years ago. After the  
 6 case was unsealed, and following demurrers by defendants, the parties initiated fact discovery in  
 7 early 2017. Discovery directed by Plaintiffs to Sprint was substantial, as was discovery directed by  
 8 Sprint to Plaintiffs.  
 9 Sprint directed written discovery at Relator and Intervenor consisting of two sets of requests  
 10 for production, four sets of special interrogatories, and one set of form interrogatories. (Hartman  
 11 Dec. ¶ 5.4) Preparing responses to these seven sets of discovery for the numerous Intervenor was a  
 12 substantial task. In response to 44 requests for document production from Sprint, Relator and  
 13 Intervenor produced 5,617,302 pages of documents from 819 custodians before February 28, 2019  
 14 (completing production for 784 of them). (Id. at ¶ 5 b)  
 15 In addition, Sprint responded to discovery from Plaintiffs: six sets of requests for production,  
 16 seven sets of special interrogatories, and one set of form interrogatories. (Hartman Dec. ¶ 5 c)  
 17 Sprint produced approximately 5,500,000 pages of documents, as well as 180,000 non-paginated  
 18 invoices. (Id. at ¶ 5 d) In addition, Sprint subpoenaed 19 third parties and produced those  
 19 documents as well. (Id.)  
 20 Sprint produced its data before either of the other remaining defendants. Relator’s counsel  
 21 and Relator’s hired expert consultants, spent hundreds of hours analyzing that data to develop a plan  
 22 to determine damages estimates for what the actual “lowest cost available” to Sprint’s government  
 23 customers would have been, if Sprint had provided true optimization reports. (Hartman Dec. ¶ 5 e)  
 24 Relator’s counsel and expert consultants also spent significant time and effort analyzing the various  
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<sup>3</sup> Fourteen political subdivisions that initially intervened have since withdrawn their interventions. For purposes of the settlement, and under the CFC A, they are treated as Non-Intervenor. As a result, the action presently involves 31 Intervenor and 276 Non-Intervenor, including the State of California.  
 Case No. 14-2012-0012517  
 5

1 reports that Sprint had provided to government customers, in order to show that these were not true  
 2 optimization reports. (Id.)  
 3 Depositions have also been numerous. Over 100 depositions of Intervenor witnesses were  
 4 taken prior to February 28, 2019, and Plaintiffs devoted substantial resources to preparation and  
 5 appearance at those depositions, nearly all of which were either noticed by, cross-noticed by, or  
 6 attended by Sprint counsel. (Hartman Dec. ¶ 5 f) Plaintiffs also took depositions of seven Sprint  
 7 witnesses. (Hartman Dec. ¶ 5 g)  
 8 Finally, the parties vigorously litigated discovery issues before the Discovery Referee.  
 9 Through February 28, 2019, Plaintiffs filed four motions to compel that involved Sprint and  
 10 responded to six motions to compel that Sprint filed against Plaintiffs. (Hartman Dec. ¶ 5 h)  
 11 C. Settlement with Sprint  
 12 Given Sprint’s comparatively small sales under the relevant contracts, the burdens of  
 13 litigation in the context of a case between parties who have far more at stake, and the litigation risks  
 14 faced by both sides, Sprint and Plaintiffs agreed to discuss settlement. Sprint and Plaintiffs  
 15 participated in a day-long mediation on February 28, 2019 before the Honorable Gary Fees of  
 16 Phillips ADR, with representatives of several Intervenor in attendance. (Hartman Dec. ¶ 6) In  
 17 submissions to the mediator, the parties provided candid assessments of their cases and their  
 18 settlement positions. At the mediation, Judge Fees discussed with each side the complexity of the  
 19 legal and factual issues, and assisted the parties in narrowing their differences.  
 20 Ultimately, the parties agreed Sprint would pay \$10.5 million to settle all claims in this  
 21 action and the Nevada Action, and executed a binding settlement term sheet (“the Term Sheet”)  
 22 (Hartman Dec. ¶ 7 and Exh. D thereto). While the Term Sheet is expressly binding, the parties also  
 23 negotiated a formal Settlement Agreement with respect to this California action. (Hartman Dec. ¶ 9  
 24 and Exh. F thereto) which the Relator and Sprint have approved and executed.<sup>4</sup> The Settlement  
 25 Agreement is conditioned on events, including this Court’s entry of an order in a form incorporated  
 26  
 27  
 28

<sup>4</sup> As set forth above, Intervenor have each approved the settlement and form of the settlement agreement, and Plaintiffs are in the process of collecting signature pages from each Intervenor. (Hartman Dec. ¶ 9) Plaintiffs will secure all signatures and submit them in support of the application for final approval of the settlement.  
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 6

1 as part of the Settlement Agreement. Although the Term Sheet addresses multiple actions, the  
 2 Settlement Agreement submitted with this motion addresses only the California action, and the  
 3 parties are not asking this Court to issue any rulings with respect to settlement of the Nevada Action.  
 4 The parties intend to seek separate approval from the Nevada court, as contemplated by the  
 5 Settlement Agreement. (Hartman Dec. Exh. F at ¶¶ 19, 34)  
 6 The Term Sheet provided, among other things, that Sprint would provide a "statement of  
 7 revenue received from intervenors and non-intervenor[s] . . . on an entity-by-entity basis, between  
 8 January 1, 2007 and December 31, 2018, who received services under any of the terms and  
 9 conditions of the CWC and WSCA contracts, whether there is a [Participating Addendum],  
 10 individual user agreement, or not, including but not limited to entities recorded in the Sprint database  
 11 as having received services under the CWC and/or WSCA rate plans." (Hartman Dec. ¶ 10) Sprint  
 12 provided the requested data, which is the basis for allocating the global settlement payment among  
 13 Plaintiffs in this action, both Intervenor[s] and Non-Intervenor[s], and Nevada, in shares proportionate  
 14 to each entity's Sprint spending, and that proposed allocation was incorporated into the settlement  
 15 agreement between the parties.<sup>5</sup> (Hartman Dec. Exh. F, Exh. A (b)(6)) Based on the data provided  
 16 by Sprint, for settlement purposes, relevant Sprint revenue from California Intervenor[s] and real  
 17 parties in interest accounts for 88% of Sprint's total relevant revenue; revenue from Nevada  
 18 intervenors and real parties in interest accounts for the remaining 12%.<sup>6</sup> (Id.)  
 19 Based on this, 88% of the \$10.5 million global settlement has been allocated to California  
 20 entities. This amount to settle the California action, reflected in the Settlement Agreement, is  
 21 \$9,220,391. (Hartman Dec. Exh. F) Each Intervenor has approved the terms of the Settlement  
 22 Agreement and the allocations among the parties based on Sprint's revenue data. Plaintiffs are  
 23 presently collecting signature pages from each of the Intervenor[s], and will submit all Intervenor  
 24 signature pages in support of the motion for final approval. (Hartman Dec. ¶ 9)

<sup>5</sup> Sprint takes no position on the allocation of the settlement payment between this action and the Nevada  
 Action, or the allocation of the settlement payment between Intervenor[s] and Non-Intervenor[s] in this action.  
 (Hartman Dec. Exh. F at pp. 5-6)  
<sup>6</sup> In light of a confidentiality designation by Sprint, the Proposed Allocations publicly filed in support of this  
 motion have been redacted to exclude the actual revenue numbers. Pursuant to Cal. R. Court 2.551(b)(3),  
 Plaintiffs have lodged an unredacted copy of the Proposed Allocation with the Court.  
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 7

11. NOTICE TO NON-INTERVENORS AND OPPORTUNITY TO CONSENT

1 Plaintiffs propose service of a Notice of Proposed Settlement on the Non-Intervenor  
 2 Plaintiffs who are to be given the opportunity to join in the settlement, as explained in more detail  
 3 below. Plaintiffs and Sprint have agreed on a proposed form for this notice, as well as on a proposed  
 4 form for a Consent and Release by Non-Intervenor. (Hartman Dec. Exh. B) These documents are  
 5 attached to the Proposed Order submitted herewith, and Plaintiffs request that the Court approve this  
 6 form of notice and the procedure for Non-Intervenor Customers to join in the settlement.  
 7 The notice and settlement joinder procedures for Non-Intervenor[s] is modeled on the  
 8 procedure previously approved by the Court in connection with the now final T-Mobile settlement,  
 9 (ROA 869) Mailing to Non-Intervenor[s] is to be made within 14 days of this Court's order  
 10 preliminarily approving the settlement. The Non-Intervenor Notice will be mailed together with all  
 11 papers submitted in support of this Motion for Preliminary Approval and the Court's order on this  
 12 motion. The Non-Intervenor Notice instructs the entities regarding the means to return their  
 13 executed consent. Ninety (90) days are provided for return of the consent, on or before February 18,  
 14 2020. This time period is designed to allow the government entities adequate time for counsel to  
 15 review the provisions of the settlement agreement and for the governmental decisionmakers to  
 16 secure any necessary approvals. In the experience of Plaintiffs' counsel, who have represented  
 17 hundreds of governmental entities in similar multi-entity litigation under the CFCA, a time period of  
 18 this length is required for governmental entities to determine whether to opt in to the settlement.  
 19 With respect to the 104 Non-Intervenor Non-Customers, Sprint and Plaintiffs have agreed  
 20 that the Non-Intervenor Non-Customers are not parties to the settlement and are not bound by the  
 21 broad releases therein. Plaintiffs propose that Non-Intervenor Non-Customers receive notice of the  
 22 proposed settlement informing them of the date for the final settlement hearing and deadline for  
 23 objections, with directions to a webpage from which they can download the complete service packet,  
 24 and contact information for counsel. A proposed form of notice to Non-Intervenor Non-Customers  
 25 is attached as Exhibit C to the Hartman Declaration, and as an exhibit to the Proposed Order  
 26 submitted herewith.  
 27  
 28

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 8

1 **IV. A FINAL SETTLEMENT APPROVAL HEARING SHOULD BE HELD AFTER A**  
2 **NOTICE PERIOD**

3 Plaintiffs propose a final settlement hearing on or about March 17, 2020. This date is based  
4 on 1) the 14 days for plaintiffs to prepare and send the Non-Intervenor Notice to the Non-Intervenor  
5 Customers; 2) the 90 days for Non-Intervenors to return any Consents; 3) 7 days for plaintiffs to  
6 prepare and file a Final Approval Motion; and 4) 21 days for notice on the final settlement motion.  
7 With this final settlement approval hearing date, any opposition to final settlement approval would  
8 be due March 4, 2020. This deadline for opposition will be incorporated in the Non-Intervenor  
9 Notice.

10 **V. THE SETTLEMENT IS IN THE BEST INTERESTS OF INTERVENORS AND NON-**  
11 **INTERVENORS**

12 A relator may release CFCA claims only as "part of a court approved settlement." Cal. Gov't  
13 Code § 12652(c)(1). The Court must determine whether dismissal -- and, accordingly, the settlement  
14 -- is in "the best interests of the parties involved" and further, "the public purposes behind [the  
15 CFCA]." *Id.* The Court should preliminarily approve the settlement of this action as to Sprint  
16 because it meets the applicable standards for the reasons set forth herein and promotes the protection  
17 of the public fisc, the primary policy behind the CFCA. See *State of California, ex rel. Boyce v.*  
18 *Bank of America Corp.*, et al., 126 Cal. App. 4th 225, 236 (2005) ("The ultimate purpose of the  
19 [CFCA] is to protect the public fisc."); *American Contract Services v. Allied Mold & Die, Inc.*, 94  
20 Cal. App. 4th 854, 858 (2001) (same).

21 **A. Non-Intervenors are not parties to the Settlement Agreement unless they expressly opt-**  
22 **in.**

23 The Settlement Agreement provides that only those entities that expressly agree to be bound  
24 by its terms are deemed "parties" to the settlement. (Hartman Dec. Exh. F ¶ 15). Sprint, Relator, and  
25 Intervenor have all agreed to be bound by the Settlement Agreement. The Non-Intervenors are not  
26 parties to the Settlement Agreement, but may choose to become parties by expressly consenting to  
27 the terms of the Settlement Agreement in the form of a signed "Consent and Release by Non-

28 Intervenor." (Hartman Dec. Exh. F ¶ 29). Those who execute such a Consent and Release become

1 parties to the Settlement Agreement as "Consenting Non-Intervenors" and will receive their full  
2 settlement allocation, as described in more detail below. Those who do not execute such a Consent  
3 and Release are referred to as Non-Consenting Non-Intervenors. Non-Consenting Non-Intervenors --  
4 including all Non-Intervenor Non-Customers -- are not parties to the Settlement Agreement.

5 **B. The releases in the Settlement Agreement are consistent with the CFCA and the**  
6 **Court's authority.**

7 The CFCA authorizes a relator to dismiss, waive, and release CFCA claims on behalf of  
8 California and its political subdivisions. If a relator brings "a civil action for a violation" of the  
9 CFCA for itself and "either for the State of California . . . or for a political subdivision" and litigates  
10 the case without intervention, "the qui tam plaintiff shall have the same right to conduct the action as  
11 the Attorney General or prosecuting authority would have had if it had chosen to proceed." Cal.  
12 Gov't Code § 12652(d)(1). This right includes the right to dismiss the action and "waive[] or  
13 release[]" a claim for a CFCA violation as "part of a court approved settlement of a false claim civil  
14 action brought under [the CFCA]." Cal. Gov't Code § 12652(c)(1).

15 The CFCA thus establishes the boundaries within which a relator may dismiss, waive, or  
16 release a CFCA claim as part of a court-approved settlement. Paragraph 23 of the Settlement  
17 Agreement states that the release of Sprint by Relator is limited to those claims that Relator has the  
18 authority to release, and does not include a release of claims by Non-Consenting Non-Intervenors --  
19 "California entities who are not parties to this Agreement" -- except for the CFCA claims. "The  
20 specific claims Plaintiffs asserted . . . under Government Code section 12651(a) in the Civil Action"  
21 (Hartman Dec. Exh. F ¶ 29(b)). This release of CFCA claims on behalf of Non-Intervenors is  
22 authorized by the CFCA. Cal. Gov't Code § 12652(c)(1).

23 In addition, the Settlement Agreement states that the releases "expressly do not encompass  
24 claims not arising out of and not in any way connected to the Covered Conduct." (Hartman Dec.  
25 Exh. F ¶ 29(d)) and enumerates specific categories of potential reserved claims.  
26  
27  
28

1 C. The allocation among Sprint customers is fair and reasonable.  
 2 Each government entity's share of purchases made from Sprint under the contracts, as  
 3 reflected in the revenue data provided by Sprint, is the basis of its settlement allocation.<sup>7</sup> (Hartman  
 4 Dec. Exh. A.) Apportioning each government entity's settlement amount relative to the government  
 5 entity's spending on Sprint services under the contracts is a fair and objective method that  
 6 compensates all affected government entities equitably. The Allocation Plan assigns to 25  
 7 Intervenor Customers 25% of compensatory damages (\$2.3 million), because they account for 25%  
 8 of the underlying sales, and the remaining 75% (\$6.9 million) to 172 Non-Intervenor Customers  
 9 who account for the remaining 75% of the sales. The remaining Intervenor and Non-Intervenor  
 10 did not procure wireless services from Sprint under the contracts and therefore receive nothing in the  
 11 settlement allocation. The Allocation Plan distributes the settlement proceeds fairly and  
 12 transparently, using the best available information on the value of the purchasing government  
 13 entities' claims.

14 The parties recognize that some Non-Intervenor Customers will not return the Consent and  
 15 Release. The parties agree that such Non-Consenting Non-Intervenor Customers should still receive  
 16 a settlement allocation. Relator pursued CECA claims on their behalf, and has secured a recovery on  
 17 their behalf. Non-Consenting Non-Intervenor Customers will, however, be differentially situated than  
 18 Intervenor and Consenting Non-Intervenor Customers. Intervenor and Consenting Non-Intervenor  
 19 Customers have agreed to release Sprint from "any and all claims . . . arising out of or in any way  
 20 connected with the Covered Conduct." (Hartman Dec. Exh. F ¶ 21, as more fully set forth therein).  
 21 Non-Consenting Non-Intervenor, by contrast, will be bound only by the release of the specific  
 22 CECA claims. Because of this, the parties have agreed that their settlement allocation should be  
 23 reduced by 10%. Amounts remaining after reductions in settlement allocations to Non-Consenting  
 24 Non-Intervenor will be reallocated among Intervenor and Consenting Non-Intervenor, in  
 25 proportion to each such entity's share of the settlement. Plaintiffs will provide a full accounting of  
 26

27 <sup>7</sup> Sprint takes no position on the allocation of the settlement payment between Intervenor and Non-  
 Intervenor in this action, except to the extent that the Parties have agreed to the 10% reduction for Non-  
 Intervenor in the absence of a signed Consent and Release. (Hartman Dec. Exh. F at pp. 5-6)  
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 11

MOTION FOR PRELIMINARY APPROVAL OF SPRINT SETTLEMENT  
 4/30/15

1 the allocations after the deadline for Non-Intervenor to opt in and in advance of the final settlement  
 2 hearing.

3 D. The Relator's role in the litigation against Sprint warrants a 45% share of the non-  
 4 Intervenor's proceeds.

5 The CECA entitles Relator to a share of the recovery by the Intervenor and Non-Intervenor.  
 6 Cal. Gov't Code § 12652(e)(2). The Proposed Allocation reflects a \$3,687,217 Relator's Share to  
 7 OnTheGo.<sup>8</sup> (Hartman Dec. Exh. A) As required by the CECA, each government entity pays the  
 8 Relator's share from its settlement allocation, with the Intervenor and the Non-Intervenor paying a  
 9 different share. The share paid by the Intervenor is 25%, which reflects agreements by Intervenor  
 10 when they retained the Relator's counsel to represent them in the action. (Hartman Dec. ¶ 59) and is  
 11 in the middle of the CECA-mandated relator share of 15 and 33% when a government entity  
 12 intervenes, based on "the extent to which the qui tam plaintiff substantially contributed to the  
 13 prosecution of the action." Cal. Gov't Code § 12652(e)(2). Intervenor have all consented to the  
 14 Settlement Agreement incorporating this 25% relator's share. Accordingly, the Court does not need  
 15 to determine the amount of the Intervenor's shares.

16 However, with respect to the Non-Intervenor, the Court must determine the amount of the  
 17 Relator's award for their claims. California Government Code section 12652(e)(3) entitles a relator  
 18 to receive from non-intervenor "not less than 25 percent and not more than 50 percent of the  
 19 proceeds of the action or settlement," on the amount that the Court determines is "reasonable for  
 20 collecting the civil penalty and damages on behalf of the government." Cal. Gov't Code  
 21 § 12652(e)(3). Here, OTG was solely responsible for the Non-Intervenor's recovery from Sprint,  
 22 entitling OTG to a 45% share of the Non-Intervenor's allocation under the Allocation Plan.

23 The California Legislature modeled the CECA on the Federal False Claims Act, but the state  
 24 statute differs in several important ways. See *American Contract Services*, 94 Cal. App. 4th at 858.  
 25 The CECA offers a larger share to a relator when a government entity does not intervene. Compare  
 26 Cal. Gov't Code § 12652(e)(3) (awarding a relator up to 50 percent of a government entity's  
 27

<sup>8</sup> Sprint was not consulted and takes no position regarding Relator's share and, as set forth in the Settlement  
 Agreement, denies Plaintiff's allegations. (Hartman Dec. Exh. F at ¶ 9)  
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 12

MOTION FOR PRELIMINARY APPROVAL OF SPRINT SETTLEMENT  
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1 recovery) with 31 U.S.C. § 3730(d)(2) (capping the relator's award at 30 percent). The Legislature  
2 intentionally departed from federal precedent when it increased the potential size of a relator's share  
3 because it determined some cases would warrant such an award. The Legislature understood some  
4 FCA cases are so complex and risky that they require a large reward to encourage whistleblowers  
5 and their lawyers to prosecute them. This case - which involves hundreds of local-government  
6 victims and thus immense litigation burdens -- is one of them.

7 Federal courts look to numerous factors to determine a relator's percentage share of the  
8 proceeds. Some of these factors are drawn from the federal FCA's legislative history; others come  
9 from the Department of Justice's Relator Share Guidelines. S. Rep. No. 99-345, at 28 (1986).  
10 reprinted in 1986 U.S.C.A.N. 5266, 5293; U.S. Dep't of Justice, Guidelines Regarding Relator's  
11 Share (Dec. 10, 1996). These include:

12 • The significance of the information provided to the government. See also *United States ex*  
13 *rel. Shea v. Verizon Communications*, 844 F. Supp. 2d 78, 82-83 (D.D.C. Feb. 23, 2012);  
14 *United States ex rel. Johnson-Pockardt v. Rapid City Reg'l Hosp.*, 252 F. Supp. 2d 892, 897-  
15 98 (D.S.D. 2003); *United States ex rel. Algeria v. Smithline Bechtel Corp.*, 114 F. Supp.  
16 2d 352, 368-70 (E.D. Pa. 2000); *United States ex rel. Taxpayers Against Fraud v. General*  
17 *Elec. Co.*, 808 F. Supp. 580, 583 (S.D. Ohio 1992), *rev'd on other grounds*, 41 F.3d 1032  
18 (6th Cir. 1994).

19 • Whether the government would ever have known about the FCA violation but for the  
20 information or documents the relator provided. See also *Shea*, 844 F. Supp. 2d at 83, 86;  
21 *United States ex rel. Rilley v. Cisco Sys.*, 2011 WL 900030 (E.D. Ark. Mar. 15, 2011); *United*  
22 *States ex rel. Rilley v. Hewlett-Packard Co.*, 784 F. Supp. 2d 1097, 1101 (E.D. Ark. 2011);  
23 *Johnson-Pockardt*, 252 F. Supp. 2d at 899; *Mercera*, 114 F. Supp. 2d at 371; *Taxpayers*  
24 *Against Fraud*, 808 F. Supp. at 583.

25 • Whether the relator's complaint exposed a widespread scheme. See also *Shea*, 844 F. Supp.  
26 2d at 85 (nationwide scheme exposed).  
27  
28

1 • Whether the relator cooperated with the government and its investigation. See also *Shea*, 844  
2 F. Supp. 2d at 87-88; *Johnson-Pockardt*, 252 F. Supp. 2d at 901-02; *United States ex rel.*  
3 *Coughlin v. IBM Corp.*, 992 F. Supp. 137, 142 (N.D.N.Y. 1998) (relator did not cooperate  
4 with government requests for extensions and vigorously opposed settlement); *United States*  
5 *ex rel. Pratt v. Alliant Techsystems*, 50 F. Supp. 2d 942, 948 (C.D. Cal. 1999).

6 • The contribution of the relator's counsel. See also *Shea*, 844 F. Supp. 2d at 83, 86-88, 90-91  
7 (rejecting government argument that contribution of relator's attorneys did not matter in  
8 assessment of relator's share); *Hewlett-Packard*, 784 F. Supp. 2d at 1101; *Johnson-Pockardt*,  
9 252 F. Supp. 2d at 901, 905; *United States ex rel. Alderson v. Quorum Health Grp.*, 171 F.  
10 Supp. 2d 1323, 1334-35, 1336-37, 1338 (M.D. Fla. 2011).

11 • Whether the relator and relator's counsel performed work that was helpful to settlement  
12 negotiations or helped to negotiate a settlement. See also *Shea*, 844 F. Supp. 2d at 85, 87-88  
13 (relator disagreed with government's damages model, but reluctantly agreed to participate in  
14 settlement negotiations so settlement could be achieved and helped negotiate settlement).  
15 Based on these factors, the Relator's extensive participation in this case -- with respect to  
16 prosecuting the claims against all the Defendants, in general, and to Sprint, in particular -- merits a  
17 45% share of the Non-Intervenor's settlement allocation for several reasons:

18 The Relator discovered and reported to the government a long-running, widespread fraud  
19 about which the government was unaware, and put together two facts the government did not know  
20 First, the Relator identified that the government's contracts with the Defendants required the  
21 Defendants to provide a very specific and clearly defined analytic service -- enterprise optimization --  
22 in order to satisfy the Defendants' attendant obligation to provide service at the "lowest cost  
23 available." And, second, the Relator provided information that Defendants failed to provide such  
24 rate-plan optimization, which led them also to fail to provide the government with the "lowest cost  
25 available" for wireless services. (Hartman Dec. ¶¶ 61-65)

26 To determine the first fact, the Relator and its counsel gathered documents that comprise  
27 complex contracts used by thousands of government entities in over a dozen states to purchase  
28

1 billions of dollars of wireless services each year. The Relator and his counsel analyzed these  
2 documents to understand the operation of agreements that consist of at least six sources of  
3 interrelated provisions. The contract documents are so voluminous they literally fill a banker's box.  
4 To ascertain the second fact -- that Defendants failed to provide such rate-plan optimization --  
5 the Relator brought to bear years of experience in the field of telecommunications expense  
6 management to understand that Defendants did not produce *genuine* rate-plan optimization reports.  
7 Having worked as a vendor for several of the Defendants, as well as sat across the table from them  
8 when Defendants' commercial customers hired the Relator to reduce their wireless costs, the Relator  
9 knew the Defendants produced a multiplicity of reports to their customers that might look like -- and  
10 in some cases even be called -- rate-plan optimization reports. (See, e.g., FAC ¶¶ 111-119.) But the  
11 Relator also knew that real optimization reports required specific elements -- a line-by-line analysis  
12 of historic usage, consideration of all rate plans available to the user, and, critically, a selection from  
13 those available-rate plans of the one that would yield the lowest cost -- and that the Defendants did  
14 not provide such analyses to their government customers on a regular basis. (Hartman Dec. ¶ 63.)  
15 The Relator and his counsel not with-and evaluated the claims of many California  
16 government entities, reviewing their records and interviewing their employees to assess the strength  
17 and scope of their claims. The information the Relator provided, the Relator's expertise in  
18 understanding and explaining the contracts and their requirements, and the Relator's analysis of  
19 government purchaser's records led to more than three dozen California political subdivisions --  
20 including some of the largest political subdivisions and 25 who purchased from Sprint -- intervening  
21 in the action. This is particularly notable because the political subdivisions did so over the  
22 declaration of the State of California. (Hartman Dec. ¶ 64.)  
23 In sum, the Relator's complaint exposed a widespread, long-running scheme that caused the  
24 State of California and hundreds of its political subdivisions to pay 20-30% more for wireless  
25 services, to the tune of hundreds of millions of dollars. The Relator revealed a fraud about which the  
26 government did not know for several reasons, including the complexity of the contracts, lack of  
27 access to the information needed to understand the government's wireless lines were not optimized  
28

1 (such as detailed usage data and the elements and price terms of all rate plans available under the  
2 contracts to the government), and the misleading analyses the Defendants provided to the  
3 government and tried to pass off as rate-plan optimization, but were a far cry from the genuine  
4 article. Moreover, the Relator's investigation made clear that the same conduct affected numerous  
5 government entities.  
6 Further, the Relator and his counsel actively litigated the claims against Sprint and  
7 successfully negotiated their resolution. Relator and counsel litigated this matter against Sprint for  
8 eighteen months longer than they litigated against T-Mobile, for which a 40% non-intervenor relator  
9 share was awarded. This additional litigation required Relator to expend substantial additional  
10 resources, and incurring substantial additional risks. For example, Relator's counsel took or  
11 defended seven depositions related to Sprint during this additional time period, and spent hundreds  
12 of hours analyzing Sprint billing, usage, and rate plan data. (Hartman Dec. ¶ 5.) For these reasons,  
13 there is little doubt that OTG substantially contributed to the prosecution of the action, and that a  
14 45% share of the Non-Intervenor's proceeds is reasonable for reaching the settlement on behalf of  
15 the Non-Intervenor. See Cal. Gov't Code § 12652(g)(3).  
16 The Court should also award OTG a 45% share of the Non-Intervenor's proceeds to maintain  
17 the incentives the Legislature established for government entities to intervene in CFCA actions. The  
18 CFCA enables intervening government entities to retain a larger portion of their proceeds from a  
19 successful action a relator brings on the flip side, the statute requires non-intervening government  
20 entities to give up a greater share of their proceeds from an action a relator brings. Compare Cal.  
21 Gov't Code § 12652(g)(2) (entitling a relator to receive "at least 15 percent but not more than 33  
22 percent" of an intervening entity's proceeds) and id. § 12652(g)(3) (entitling a relator to receive "not  
23 less than 25 percent and not more than 50 percent" of a non-intervening entity's proceeds). By  
24 offering a monetary incentive, the statute thus encourages government entities to intervene in  
25 meritorious CFCA matters that recover for the public (see dollars lost to fraud). This feature of the  
26 statute also recognizes the (often extraordinary) burdens intervening entities bear in investigating,  
27  
28

1 litigating, and successfully settling CFCa actions... especially compared to non-intervenor, who sit  
 2 on the sidelines while a *qui tam* relator and its counsel achieve a monetary recovery for them.  
 3  
 4 In a case like this one, which involves both intervenor and non-intervenor, the Court should  
 5 be mindful to protect the incentive to intervenors the Legislature created by ensuring that Intervenor's  
 6 recover a meaningfully larger percentage of the proceeds than Non-Intervenor's. As stated above, the  
 7 Intervenor's have agreed to pay the Relator 25% of the proceeds of their portion of the settlement, an  
 8 amount well within the statutorily established range. In addition, the Intervenor's have also elected to  
 9 retain counsel and pay to counsel 8% of their proceeds from this action. Accordingly, the  
 10 Intervenor's will pay to the Relator and counsel a total of 33%, and accordingly recover 67% of their  
 11 proceeds. If the Court awards OTG a 45% share of the Non-Intervenor's' proceeds, the Non-  
 12 Intervenor's will recover 55% of their proceeds. The 12% difference between the Intervenor's' and  
 13 the Non-Intervenor's' recoveries ensures the Intervenor's will recover a meaningfully larger  
 14 percentage of the proceeds than Non-Intervenor's, which is critical to ensuring the Intervenor's are  
 15 incentivized to remain intervenors in this case and to intervene in other CFCa matters in the future.  
 16  
 17 E. The separately-negotiated settlement of Plaintiff's attorney fees and costs claim is  
 18 reasonable.  
 19  
 20 Spirit has agreed to pay \$2 million to resolve Relator's claim for attorney fees and costs  
 21 pursuant to Cal. Gov't Code §12652(g)(8). The Relator's counsel bore (and continues to bear) the  
 22 entire risk of litigation; counsel's ability to recover the extraordinary expenses and fees incurred in  
 23 prosecuting the claims of hundreds of the Non-Intervenor's is entirely tied to the success of the  
 24 action. The fees counsel requests the Court preliminarily approve represent a fraction of the fees and  
 25 expenses counsel has incurred to date prosecuting the matter on behalf of hundreds of California  
 26 government entities. Plaintiffs provide evidence to substantiate the reasonableness of the requested  
 27 fee award under the settlement in this motion and the accompanying declaration of Relator's counsel  
 28 Anne Hartman.

1 that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees."  
 2 The statute makes clear that the award of fees and costs to a plaintiff who is successful on a false-  
 3 claim claim is mandatory. By virtue of the settlement, Plaintiff prevailed in the CFCa action as to  
 4 Sprint, entitling the Relator to such "reasonable expenses . . . plus reasonable costs and attorney's  
 5 fees."  
 6  
 7 A court assessing attorney fees "begins with a tonkstone or lodestar figure, based on the  
 8 careful compilation of the time spent and reasonable hourly compensation of each attorney involved  
 9 in the presentation of the case." Ketchum v. Moses, 24 Cal. 4th 1122, 1131-32 (2001) (internal  
 10 quotation marks and ellipses omitted). As to the hours of work performed, "an award of attorney  
 11 fees may be based on counsel's declarations, without production of detailed time records." Rainings  
 12 DATA Corp. v. Barronhecht, 175 Cal. App. 4th 1363, 1375 (2009); see also Styx Properties III, Inc.  
 13 v. Rankin, 226 Cal. App. 4th 691, 698 (2014) (same). As for the hourly fee, courts have recognized  
 14 that trial judges are best situated to decide, in their discretion, "the value of the professional services  
 15 rendered in their courts." Christian Research Inst. v. Altor, 165 Cal. App. 4th 1315, 1321 (2008).  
 16  
 17 The California Supreme Court has instructed that the lodestar amount calculated in this  
 18 manner is then adjusted to account for factors such as "(1) the novelty and difficulty of the questions  
 19 involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the  
 20 litigation precluded other employment by the attorney's, [and] (4) the contingent nature of the fee  
 21 award." Ketchum, 24 Cal. 4th at 1132 (citing Serrano v. Priest, 20 Cal. 3d 25, 49 (1977)) ("Serrano  
 22 [I]"). Such an enhancement to the lodestar amount is "intended to compensate for the risk of loss  
 23 generally in contingency cases," compensating counsel "not only for the legal services he [or she]  
 24 renders but for the loan of those services." Id.  
 25  
 26 [T]he unadorned lodestar reflects the general local hourly rate for a fee-bearing case,  
 27 it does *not* include any compensation for contingent risk, extraordinary skill, or any  
 28 other factors a trial court may consider under Serrano III. The adjustment to the  
 29 lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney  
 30 will not receive payment if the suit does not succeed, constitutes carried  
 31 compensation, unlike a windfall; it is neither unexpected nor fortuitous. Rather, it is  
 32 intended to approximate market-level compensation for such services, which typically  
 33 includes a premium for the risk of nonpayment or delay in payment of attorney fees.  
 34 In this case, for example, the lodestar was expressly based on the general local rate


1 for legal services in a *noncontingent* matter, where a payment is certain regardless of  
 2 outcome.  
 3 *Id.* at 1138 (emphasis in original). This lodestar enhancement is applied to statutory fee awards  
 4 under the CFCRA, as “the California Supreme Court intended its lodestar method to apply to a  
 5 statutory attorney’s fee award unless the statutory authorization for the award provided for another  
 6 method of calculation.” *Meister v. Regents of Univ. of California*, 67 Cal. App. 4th 437, 448-49  
 7 (1998) (cited in *Ketchum*, 20 Cal. 2d at 1134-35).  
 8 While Plaintiffs here do not seek a multiplier enhancement to the lodestar, they have  
 9 calculated that lodestar using current hourly rates. In *Missouri v. Lehigh* by Agreei, 491 U.S. 274,  
 10 283-84 (1989), the Supreme Court recognized that because delayed and contingent legal fees should  
 11 “[c]learly” not be valued at the same hourly rate as fees payable on an hourly basis, “an appropriate  
 12 adjustment for delay in payment... whether by the application of current rather than historic hourly  
 13 rates or otherwise” is appropriate. See also *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1078 (N.D.  
 14 Cal. 2010) (in an evaluation of an attorney-fee award under *inter alia*, California Code of Civil  
 15 Procedure section 1021.5, holding that “Plaintiff’s counsel are entitled to receive their *current* hourly  
 16 rates as compensation for the delay in payment”).  
 17 The accompanying declaration of Relator’s counsel Anne Hartman describes the relevant  
 18 work performed, the hours worked, the basis for the hourly fees of each professional, and the  
 19 expenses incurred. (Hartman Dec. ¶¶ 12-58.) As to the attorney fees incurred, counsel’s efforts to  
 20 prosecute the claims against the three Defendants is difficult to allocate on a defendant-by-defendant  
 21 basis. Prior to the case entering active litigation, investigative and research efforts helped the case as  
 22 a whole. Even after the Court ruled on the denunciations and discovery began in earnest, it remained  
 23 difficult to attribute time on many tasks to any particular defendant. For example, defendants served  
 24 functionally identical document requests and written discovery on interviewees, and cross-noticed  
 25 depositions.  
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1 Lead counsel in the claims against Sprint<sup>6</sup> put in 38,601 hours that equate to attorney fees of  
 2 \$21.44 million at present rates. (Hartman Dec. ¶¶ 50-54.) Lead counsel’s \$2,000,000 fee settlement  
 3 therefore amounts to less than 10% of lead counsel’s actual fees incurred in this case.  
 4 Looking only at attorneys’ fees, however, is misleading, as this litigation has also required a  
 5 substantial investment of costs, including extensive expert analysis of billing and usage data.  
 6 Plaintiffs’ counsel has advanced these costs, and must look to the settlement to recover them.  
 7 Through February 28, 2019, plaintiffs’ counsel had advanced costs of \$4,386,587. (Hartman Dec.  
 8 ¶ 57.) Accounting for recovery of advanced costs greatly increases the discount on attorneys’ fees in  
 9 the fee settlement.  
 10 The number of hours lead counsel spent prosecuting the claims against Sprint is reasonable;  
 11 this is particularly true in light of the complexity of the contracts, the large number of entities  
 12 involved, the extraordinary damages to California government entities, and the procedural history of  
 13 the case. Investigating the matter prior to filing required significant research to determine the  
 14 documents that comprised the form contracts at issue and understand their interrelated requirements.  
 15 This required a thorough assessment of three contracts (uniform in all material terms across  
 16 defendants) under which thousands of government entities in over a dozen states purchased billions  
 17 of dollars of wireless services each year.  
 18 After filing the matter under seal, counsel spent considerable time assisting the Attorney  
 19 General’s office in its investigation, suggesting investigative directions, providing draft document  
 20 requests, and analyzing records produced. Counsel also responded to legal issues that arose in the  
 21 investigation in the form of legal memos and less formal communications. The Attorney General  
 22 spent over three years investigating the Relator’s claims. (Hartman Dec. ¶¶ 18-19)  
 23 The investigation of the AG’s office focused on the California Wireless Contract, and the  
 24 relationship between the State and the wireless carriers including Sprint. In addition, counsel  
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1 expended considerable time communicating with and investigating the claims of political  
 2 subdivisions. This multiplied counsel's necessary efforts greatly, as it necessitated dozens of  
 3 discussions, meetings, and presentations with political subdivisions and their employees, counsel,  
 4 and leaders. Even after California's declination, lead counsel sought to efficiently resolve this case  
 5 through early discussions with the Defendants, including Sprint. When these efforts failed and the  
 6 case was unsealed, the Relator and approximately three dozen intervening political subdivisions  
 7 proceeded with their claims against Sprint and the other Defendants. (Hartman Dec. ¶ 20)  
 8 The fees lead counsel requests include work on three demurrers, which Defendants, including  
 9 Sprint, jointly filed soon after the matter was unsealed. The fees also include work associated with  
 10 propounding and responding to seven sets of written discovery with Sprint. With respect to both the  
 11 demurrer and discovery, lead counsel made every reasonable attempt to not duplicate efforts and to  
 12 handle the issues efficiently. Finally, lead counsel prepared a comprehensive brief for the mediator  
 13 in advance of the collaborative effort that successfully resolved the Relator's claims against Sprint.  
 14 (Hartman Dec. ¶ 21)  
 15 In sum, lead counsel's request for approval of the \$2 million fee settlement is reasonable in  
 16 light of counsel's efforts prosecuting the case against Sprint.  
 17 In addition, lead counsel's hourly rates are reasonable. Even though counsel's fee request is  
 18 not based on its hourly rates – because the request discounts those rates so steeply that it bears no  
 19 mathematical relationship to them – counsel's hourly rates are nonetheless reasonable. Lead counsel  
 20 are highly skilled attorneys who devote their practice to representing whistleblowers and government  
 21 entities in false-claims actions like this one. Lead counsel are also among the only lawyers in  
 22 California with successful experience in multi-party false-claims litigation, which involves  
 23 representing a relator and intervening government entities in the same matter.  
 24 **VI. CONCLUSION**  
 25 All aspects of the settlement are fair, reasonable, and in the best interests of all interested  
 26 parties, including the Non-Intervenor not before the Court. The Relator respectfully asks the Court  
 27 to:  
 28

1 • Approve the Notice of Proposed Settlement, and provide deadlines for all dates therein,  
 2 including the date for the Final Approval Hearing  
 3 • Preliminarily approve the settlement, and the proposed allocation of settlement amounts  
 4 among the Intervenor, the Non-Intervenor, the Relator, and the Relator's counsel, as within  
 5 the range of possible approval based on "the best interests of the parties involved" and "the  
 6 public purposes behind [the CFCJA]," pursuant to Government Code section 12652(c)(1).  
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 8 Dated: September 27, 2019  
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 By:   
 Anne Hayes Hartman  
 Attorneys for Plaintiffs



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43 **FOR THE COUNTY OF SACRAMENTO**  
 44 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 45  
 46 **STATE OF CALIFORNIA et al., etrel. OnTheGo**  
 47 **Wireless, LLC**  
 48  
 49 **Plaintiffs,**  
 50 **vs.**  
 51 **CELLCO PARTNERSHIP, doing business as**  
 52 **VERIZON WIRELESS, et al.**  
 53  
 54 **Defendants.**  
 55  
 56 **DECLARATION OF ANNE HARTMAN**  
 57 **IN SUPPORT OF MOTION FOR**  
 58 **PRELIMINARY APPROVAL OF**  
 59 **SETTLEMENT WITH SPRINT**  
 60 **DEFENDANTS**  
 61  
 62 **BY FAX**  
 63  
 64 **Date:** November 6, 2019  
 65 **Time:** 1:30 p.m.  
 66 **Dept. 92, Hon. Judy Hoizer Hershler**

FILED/ENDORSED  
 SEP 27 2019  
 H. Finkbeiner  
 Hearer Clerk

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a. Intervenor and Relator responded to written discovery and document requests from Sprint including two sets of requests for production, consisting of 44 separate requests and four sets of special interrogatories and one set of form interrogatories, consisting of 29 interrogatories. Given the number of Intervenor at the time each set of discovery was served, responding to these interrogatories and document requests required Plaintiffs to prepare and serve over 180 separate written responses and objections.

b. Prior to February 28, 2019, Plaintiffs produced 5,617,502 pages of documents from 819 custodians, completing production for 784 of those custodians.

c. Plaintiffs also served discovery on Sprint, to which Sprint responded. Prior to February 28, 2019, Sprint responded to six sets of requests for production, seven sets of special interrogatories, and one set of form interrogatories from Plaintiffs.

d. Prior to February 28, 2019, Sprint produced approximately 5,589,000 pages of documents, as well as 180,000 non-paginated invoices. In addition, Sprint subpoenaed 16 third parties and produced those documents as well. Relator's counsel and experts have devoted substantial resources to reviewing the documents and data produced by Sprint.

e. Relator's counsel and Relator's hired expert consultants, spent hundreds of hours analyzing data produced by Sprint to calculate damages estimates based on the actual "lowest cost available" to Sprint's government customers, had Sprint provided true optimization reports. Relator's counsel and expert consultants also spent significant time and effort analyzing the various reports that Sprint had provided to government customers.

f. Prior to February 28, 2019, over 100 Intervenor depositions were taken by defendants. Nearly all of these were either noticed by, cross-noticed by, or attended by Sprint counsel.

g. Prior to February 28, 2019, Plaintiffs took the depositions of seven Sprint witnesses.

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h. The parties vigorously litigated discovery issues before the Discovery Referee. Through February 28, 2019, Plaintiffs filed four motions to compel that involved Sprint and responded to six motions to compel that Sprint filed against Plaintiffs.

6. Sprint and Plaintiffs participated in a day-long mediation on February 28, 2019, before the Honorable Gary Fees, with representatives of several Intervenor in attendance.

7. At the conclusion of the mediation session, the parties executed a document titled "Term Sheet Between Relator and Sprint, Subject to Approval by California Intervenor and Nevada". A true and correct copy of the Term Sheet is attached as Exhibit D hereto.

8. Also at the conclusion of the mediation session, Sprint and Relator's counsel executed a document titled "Term Sheet Between Susman Godfrey LLP, Constantine Cannon LLP, and Sprint". A true and correct copy of the Attorneys' Fees Term Sheet is attached as Exhibit E hereto.

9. Sprint and Plaintiffs subsequently negotiated a Settlement and Release Agreement which Relator and Sprint have executed, and which Intervenor have approved. Signatures from Intervenor are presently being gathered, and are included to the extent they have been received.

Prior to final approval, Plaintiffs will provide all Intervenor signatures. A true and correct copy of the Settlement and Release Agreement, including all exhibits, is attached as Exhibit F hereto.

10. The Term Sheet executed on February 28, 2019, provided, among other things, that Sprint would provide a "statement of revenue received from intervenors and non-intervenor[s] on an entity-by-entity basis, between January 1, 2007 and December 31, 2018, who received services under any of the terms and conditions of the CWC and WSCA contracts, whether there is a [Participating Addendum], individual user agreement, or not, including but not limited to entities recorded in the Sprint database as having received services under the CWC and/or WSCA rate plans". Sprint provided the requested data and, based on that data, for settlement purposes, the total relevant Sprint revenue for California and Nevada entities is distributed as follows:

California	89%
Nevada	12%
Total	100%

1 11. The Term Sheet provides that Sprint will pay a total of \$10.5 million to settle this  
2 action and a related action pending in Nevada, *State of Nevada et. al. v. OnITango Wireless v.*  
3 *Calico Partnership et. al.*, 24 Judicial District Washoe County Case No. CV12-03093, filed  
4 December 12, 2012 (the "Nevada Action"). Based on the data provided by Sprint, Sprint sales to  
5 Nevada plaintiff entities account for 12% of the total Sprint sales to both California and Nevada.  
6 Accordingly, Plaintiff allocates 88% of the total settlement to California, and 12% to Nevada. This  
7 results in a California settlement payment of \$9,220,391.

8 12. My firm Constanine Cannon is an internationally recognized law firm with over 70  
9 lawyers in four offices located in New York, Washington, San Francisco, and London. Constanine  
10 Cannon has the largest dedicated whistleblower practice in the country, with over 20 attorneys  
11 specializing in *qui tam* work. Over the past ten years, the firm has recovered more than \$3 billion  
12 for its clients and tens of billions of dollars more in injunctive relief. This is in addition to the \$1.3  
13 billion our whistleblower lawyers have recovered for the government and \$240 million they have  
14 recovered for their whistleblower clients in cases on which they have served as lead counsel.

15 13. Principal co-counsel Susman Godfrey LLP is one of the nation's leading litigation  
16 boutique law firms, with a focus on high-stakes commercial litigation. Susman has over 150  
17 attorneys and staff attorneys at offices in Houston, Seattle, Los Angeles and New York. Over its 40-  
18 year history, Susman has amassed numerous substantial verdicts and trial wins on behalf of both  
19 plaintiffs and defendants.

20 14. Constanine Cannon ("CC") and Susman Godfrey ("SG") collectively ("Counsel")  
21 have the capacity to thoroughly and vigorously represent relators and government entities in  
22 complex cases such as this one. The firms have committed all necessary resources to do so.

23 15. As one of the lead partners on this case with respect to the claims against Sprint, I  
24 have supervised the legal work performed on this matter by attorneys and staff at CC, and have  
25 worked closely with counsel at SG, including the lead SG attorneys for this matter, Bill Connolly,  
26 Amanda Born, and Arun Subramanian.

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1 16. Collectively, CC and SG have devoted staffing levels as appropriate for each stage of  
2 litigation, often changing staffing levels in reaction to Defendants' litigation strategy and the support  
3 requested by the State of California, and the Intervenor.

4 17. I began to work on this matter with Mr. Lampey in May 2012 when we were  
5 partners at Goodin, MacBride, Squeri, Day & Lampey, LLP. Investigating the matter prior to filing  
6 required significant research to determine the documents that comprised the contracts at issue and  
7 understand their interrelated requirements. This required a thorough assessment of three contracts  
8 under which thousands of government entities in over a dozen states purchased billions of dollars of  
9 wireless services each year.

10 18. After filing the matter under seal, my colleagues and I spent considerable time  
11 assisting the Attorney General's office in its investigation, suggesting investigative directions,  
12 providing draft document requests, and analyzing records the Defendants produced. We also  
13 responded to legal issues that arose in the investigation in the form of legal memos and less formal  
14 communications. The Attorney General spent over three years investigating the Relator's claims.

15 19. The Attorney General's investigation focused on the California Wireless Contract  
16 ("CWC"), and the relationship between the State of California and the wireless carriers who were  
17 party to that contract, including Sprint. My colleagues and I therefore devoted significant efforts to  
18 investigating Sprint's contractual relationships with California political subdivisions. Counsel  
19 expended considerable time communicating with and investigating the claims of political  
20 subdivisions, multiplying our necessary efforts exponentially, as it necessitated dozens of  
21 discussions, meetings, and presentations with political subdivisions' employees, counsel, and  
22 leaders.

23 20. Even after California's declination, lead counsel sought to efficiently resolve this case  
24 through outreach to the Defendants, including Sprint. My colleagues and I requested that  
25 Defendants show they complied with the contractual requirements at issue, as they claimed.  
26 Defendants' unwillingness to produce evidence outside of formal discovery led the Relator and  
27 approximately three dozen intervening political subdivisions to prosecute the claims against all the  
28 Defendants, including Sprint.

1 21. The fees that counsel for Relator requests include work on three demurrers, which  
2 Defendants, including Sprint, jointly filed soon after the matter was unsealed, as well as extensive  
3 discovery and related motion practice.  
4 22. SG appeared as co-counsel in January 2017. At or around the same time, the parties  
5 began formal discovery, and the fees incurred by counsel include work associated with propounding  
6 and responding to the discovery outlined in Paragraph 5 above. At all times, Counsel has made every  
7 reasonable attempt to not duplicate efforts and to handle issues efficiently.  
8 23. Bill Carmody of Susman Godfrey graduated from the University of Tulsa College of  
9 Law in 1988. He is a nationally recognized trial lawyer who tries bet-the-company cases for  
10 plaintiffs and defendants in state and federal courts throughout the country, with experience in a  
11 wide-range of complex business and intellectual property litigation, including antitrust, commercial  
12 and securities fraud, structured finance and derivatives litigation, class actions, False Claims Act, oil  
13 & gas, trust and estates, trade secrets, trademark, and patent infringement. He is a member of the  
14 American Board of Trial Advocates, a fellow of the Litigation Counsel of America, and a fellow of  
15 the American Bar Foundation, and has been recognized by Law360 as one of its "10 Titans of the  
16 Plaintiffs Bar" by National Law Journal as an Elite Trial Lawyer, and by Benchmark as one of its  
17 Top 100 Trial Lawyers, among other honors. A more complete recitation of Mr. Carmody's  
18 experience appears at <http://www.susmangodfrey.com/attorneys/bill-carmody/>.  
19 24. My partner, Wayne Lamprey, graduated from the University of California, Berkeley  
20 School of Law in 1980 and was admitted to the California bar the same year. During the early  
21 1980s, Mr. Lamprey was associated with Armour, Goodin, Schlotz & MacBride and then with  
22 Heller, Ehrman, White & McAuliffe, in San Francisco. From 1987 to 1991, Mr. Lamprey practiced  
23 with Jackson Tufts Cole & Black, LLP in San Francisco, where he pursued and won one of the  
24 largest financial-institution-fraud cases, recovering \$100 million for the Federal Deposit Insurance  
25 Corporation (FDIC). Mr. Lamprey was an Assistant United States Attorney in the Criminal Division  
26 of the Northern District of California from 1991 to 1997, where he prosecuted white-collar crime in  
27 many areas of fraud, including securities, bank, savings and loan, government contract, healthcare,  
28 and investment. After serving as a federal prosecutor, Mr. Lamprey rejoined Goodin, MacBride,

1 Squeri, Day & Lamprey, LLP, where he was a name partner and founding head of the whistleblower  
2 practice group, bringing actions under the False Claims Act. At Constantine Cannon, which he  
3 joined in 2015, Mr. Lamprey is co-head of the firm's whistleblower practice group. An  
4 accomplished trial lawyer, Mr. Lamprey is a fellow of the American College of Trial Lawyers. A  
5 more complete recitation of Mr. Lamprey's background appears at  
6 <https://constantinecannon.com/attorney/wayne-lamprey/>.  
7 25. Arun Subramanian of Susman Godfrey is a 2004 graduate of Columbia Law School.  
8 He has clerked for the Hon. Denise Jacobs of the U.S. Court of Appeals for the Second Circuit, for  
9 the Hon. Gerard E. Lynch of the U.S. District Court for the Southern District of New York, and for  
10 the Hon. Ruth Bader Ginsburg of the U.S. Supreme Court. He has extensive trial and litigation  
11 experience, including in a False Claims Act lawsuit against the Swiss drug manufacturer Novartis  
12 Pharmaceuticals Corporation which settled for over \$450 million. A more complete recitation of  
13 Mr. Subramanian's background appears at [http://www.susmangodfrey.com/attorneys/arun-](http://www.susmangodfrey.com/attorneys/arun-subramanian)  
14 [subramanian](http://www.susmangodfrey.com/attorneys/arun-subramanian).  
15 26. I am a 1996 graduate of Berkeley Law School. I also received a Master's in Public  
16 Policy from the Goldman School of Public Policy in 1996. I have been in private practice in the San  
17 Francisco Bay Area since then, first at Jackson Tufts Cole & Black, LLP, then at Goodin, MacBride,  
18 Squeri, Day & Lamprey, LLP, before coming to Constantine Cannon in 2015. For the last 18 years,  
19 I have focused on whistleblower work, including being on the legal team that won a \$225 million  
20 judgment after trial on behalf of several Los Angeles and California agencies against an electric  
21 utility for overcharging its government customers. A more complete recitation of my background  
22 appears at <https://constantinecannon.com/attorney/anne-haves-hartman>.  
23 27. Amanda Bonn of Susman Godfrey is a 2009 graduate of Stanford Law School, she  
24 previously served as a Law Clerk to the Honorable Dean D. Pregerson for the Central District of  
25 California and is admitted to the State Bar of California. Ms. Bonn has extensive litigation  
26 experience in intellectual property, employment and labor, class action, antitrust, qui tam, and  
27 securities matters. A more complete recitation of Ms. Bonn's experience can be found at  
28 <http://www.susmangodfrey.com/attorneys/amanda-bonn>.

1 28. Steven M. Shepard of Susman Godfrey is a 2007 graduate of Yale Law School.  
2 Before joining Susman Godfrey, he served as a law clerk for the Hon. Alex Kozinski of the U.S.  
3 Court of Appeals for the Ninth Circuit and the Hon. Anthony M. Kennedy of the U.S. Supreme  
4 Court. He has represented plaintiffs and defendants in a wide variety of complex commercial  
5 litigation, including patent infringement, breach of contract, insurance coverage (representing the  
6 insured), fraud, unfair competition, antitrust, and False Claims Act (whistleblower) claims.  
7 Additional detail regarding Mr. Shepard's experience can be found at  
8 <http://www.susmangodfrey.com/attorneys/steven-m-shepard/>.  
9 29. Jordan Connors of Susman Godfrey is a 2008 graduate of Columbia Law School.  
10 Before joining Susman Godfrey, he served as a law clerk for the Hon. Vaughn Walker of the U.S.  
11 District Court for the Northern District of California. Mr. Connors has successfully represented  
12 plaintiffs and defendants in a wide variety of high-stakes commercial cases, including patent  
13 infringement, antitrust, bankruptcy, class action, trusts and estates, securities fraud, and false  
14 advertising matters. More information regarding Mr. Connors can be found at  
15 <http://www.susmangodfrey.com/attorneys/jordan-connors/>.  
16 30. Bryan Caforio of Susman Godfrey received his J.D. in 2008 from Yale Law School  
17 and previously served as a law clerk for the Hon. Sidney R. Thomas of the U.S. Court of Appeals for  
18 the Ninth Circuit. He has experience in a wide array of commercial litigation, at both the trial and  
19 appellate level, including representing consumers, litigating against banks and other financial  
20 institutions, lawsuits on behalf of whistleblowers alleging violations of the False Claims Act, and  
21 cases involving residential mortgage backed securities, antitrust claims, and trade secrets.  
22 Additional information regarding Mr. Caforio can be found at  
23 <http://www.susmangodfrey.com/attorneys/bryan-caforio/>.  
24 31. Rachel Black of Susman Godfrey received her J.D., *magna cum laude*, from Cornell  
25 Law School in 1999. She previously served as a law clerk for the Hon. Alan C. Kay of the U.S.  
26 District Court for the District of Hawaii and the Hon. Robert R. Beezer of the U.S. Court of Appeals  
27 for the Ninth Circuit. She is a fellow in Litigation Counsel of America and the American Bar  
28 Foundation. She has tried and managed matters in state and federal courts across the country.

1 involving a variety of claims, including patent infringement, audit malpractice, financial fraud,  
2 unfair business practices, environmental remediation, breach of contract, and antitrust. Additional  
3 information regarding Ms. Black can be found at <http://www.susmangodfrey.com/attorneys/rachel-black/>.  
4 [black/](http://www.susmangodfrey.com/attorneys/rachel-black/).  
5 32. Associate attorney Ari Yampolsky received his J.D., *magna cum laude*, in 2012 from  
6 the University of California, Irvine School of Law, where he was a senior editor of the UC Irvine  
7 Law Review. Following law school, Mr. Yampolsky clerked for the Honorable Jane Branstetter  
8 Sranch of the U.S. Court of Appeals for the Sixth Circuit and the Honorable Kevin Hunter Sharp of  
9 the U.S. District Court for the Middle District of Tennessee. Mr. Yampolsky began his *qui tam*  
10 practice at Phillips & Cohen LLP in 2014, before joining Constantine Cannon in 2015. More  
11 information about Mr. Yampolsky's qualifications may be found at  
12 <https://constantinecannon.com/attorney/ari-yampolsky/>.  
13 33. Associate attorney Nicholas Spear of Susman Godfrey received his J.D. with high  
14 honors from the University of Chicago Law School in 2014. Before joining Susman Godfrey, he  
15 served as a law clerk for the Hon. Philip S. Gutierrez of the U.S. District Court for the Central  
16 District of California and the Hon. Andrew D. Hurwitz of the U.S. Court of Appeals for the Ninth  
17 Circuit. He is admitted to the State Bar of California. More information about Mr. Spear's  
18 qualifications can be found at <http://www.susmangodfrey.com/attorneys/nick-spear/>.  
19 34. Associate attorney Meng Xi of Susman Godfrey graduated from the University of  
20 California at Berkeley School of Law, and subsequently served as a law clerk for the Hon. Sharon  
21 Post of the U.S. Court of Appeals for the Federal Circuit. She has experience in commercial  
22 litigation matters in federal and state courts across the country, particularly patent infringement and  
23 business contract disputes, has successfully represented both plaintiffs and defendants, and has  
24 spearheaded every phase of a matter from inception through trial. More information about Ms. Xi  
25 can be found at <http://www.susmangodfrey.com/attorneys/meng-xi/>.  
26 35. Associate attorney Rohit Nath of Susman Godfrey received his J.D. with high honors  
27 from the University of Chicago Law School in 2014. Mr. Nath joined Susman Godfrey after  
28 working as a trial attorney at the U.S. Department of Justice and as a law clerk on the U.S. Court of

1 Appeals for the Ninth Circuit. More information about Mr. Nath's qualifications can be found at  
2 <http://www.susmangodfrey.com/attorneys/rohit-nath/>.  
3 36. Associate attorney Art Ruben of Susman Godfrey is a 2014 *cum laude* graduate of  
4 Harvard Law School who previously served as a law clerk for the Hon. Richard J. Sullivan of the  
5 U.S. District Court of the Southern District of New York and the Hon. Bruce M. Selya of the U.S.  
6 Court of Appeals for the First Circuit. More information about Mr. Ruben's qualifications can be  
7 found at <http://www.susmangodfrey.com/attorneys/art-ruben/>.  
8 37. Associate attorney Jesse-Justin Cuevas of Susman Godfrey received her law degree,  
9 *magna cum laude*, from Northwestern University School of Law, and previously served as a law  
10 clerk to the Hon. Dolly M. Gee of the U.S. District Court for the Central District of California and  
11 the Hon. Albert Diaz of the U.S. Court of Appeals for the Fourth Circuit. She is admitted to the  
12 State Bar of California. Additional information regarding Ms. Cuevas can be found at  
13 <http://www.susmangodfrey.com/attorneys/jesse-justin-cuevas/>.  
14 38. Associate attorney Sarah Poppy Alexander is a 2012 graduate of Harvard Law  
15 School, where she served as Editor in Chief of the *Harvard Civil Rights-Civil Liberties Law Review*.  
16 She obtained her M.A. in Political Science in 2007 from the University of California, Berkeley. Ms.  
17 Alexander served as a law clerk to the Honorable Martha Craig Daughtery of the United States Court  
18 of Appeals for the Sixth Circuit. Before joining Constantine Cannon, Ms. Alexander practiced civil  
19 litigation at Rosen, Bien, Galvan & Grunfeld LLP in San Francisco, CA, a litigation boutique  
20 dedicated to complex class action litigation in trial and appellate courts in the areas of antitrust,  
21 employment, civil rights, banking and consumer law, voting rights, and disability rights. Ms.  
22 Alexander was on the litigation team that successfully settled a civil rights class action against the  
23 Monterey County Jail, resulting in three published opinions in this court. She joined Constantine  
24 Cannon in 2016 to focus her practice on *qui tam* litigation. Ms. Alexander was named a Rising Star  
25 by Northern California Super Lawyers in 2016. More information about Ms. Alexander's  
26 qualifications may be found at <https://constantheccannon.com/attorney/sarah-poppy-alexander/>.  
27 39. Francine T. Radford, my former partner at Goodin, MacBride, Squeri, Day &  
28 Lamprey, LLP, graduated from Golden Gate University School of Law with high honors in 1993.

1 Ms. Radford has been with Goodin MacBride's business litigation group since 1993. She has been  
2 an adjunct professor at Golden Gate University School of Law, has served as an arbitrator for the  
3 Bar Association of San Francisco's Homeless Shelter Pro Bono Arbitration Project, and as a member  
4 of the board of the San Francisco Women Lawyers Alliance. More information about Ms. Radford's  
5 qualifications may be found at [https://www.goodinmacbride.com/attorney-profiles/attorney-](https://www.goodinmacbride.com/attorney-profiles/attorney-francine-radford.html)  
6 [francine-radford.html](https://www.goodinmacbride.com/attorney-profiles/attorney-francine-radford.html).  
7 40. Keith E. Johnson, of counsel at Goodin, MacBride, Squeri, Day & Lamprey, LLP,  
8 received his J.D. from the University of Houston Law Center in 1991. Prior to joining Goodin  
9 MacBride in 1993, Mr. Johnson was a partner with the litigation firm of Goforth, Lewis & Williams  
10 in Houston, Texas. Mr. Johnson has represented clients in state and federal court in cases involving  
11 product liability, toxic tort, personal injury, employment discrimination, and business litigation,  
12 including audit malpractice, director and officer liability, and unfair business practice cases. He has  
13 worked on whistleblower claims, white collar defense cases, and has handled administrative matters  
14 before regulatory/licensing agencies. More information about Mr. Johnson's qualifications may be  
15 found at <https://www.goodinmacbride.com/attorney-profiles/attorney-keith-e-johnson.html>.  
16 41. Staff attorney Alex Stenkovsky of Susman Godfrey is a 1996 graduate of New York  
17 Law School. Mr. Stenkovsky has over 20 years of experience in e-discovery, specializing in  
18 complex litigation at the federal and state level. Prior to joining Susman Godfrey, Mr. Stenkovsky  
19 was an attorney with O'Melveny & Myers LLP. More information about Mr. Stenkovsky's  
20 qualifications can be found at <http://www.susmangodfrey.com/attorneys/alex-stenkovsky/>.  
21 42. Staff attorney Brandon Davis of Susman Godfrey received his J.D. in 2016 from the  
22 University of Houston. He has experience representing plaintiffs and defendants in a number of  
23 areas, ranging from commercial litigation to intellectual property to quiet title actions. More  
24 information about Mr. Davis's qualifications can be found at  
25 <http://www.susmangodfrey.com/attorneys/mr-brandon-davis/>.  
26 43. Staff attorney Kevin Hornmann of Susman Godfrey received his J.D., *magna cum*  
27 *laude*, in 2010 from the University of Houston Law Center. Additional information regarding Mr.  
28 Hornmann can be found at <http://www.susmangodfrey.com/attorneys/kevin-hornmann/>.





51. Accordingly, in the four-defendant period, lead counsel put in 8,705 hours that totaled \$6.2 million in attorneys' fees at present rates.

52. The second table below ("Table 2") summarizes the professional time the attorneys and staff of SG spent prosecuting the claims against Sprint from their appearance in the action through February 28, 2019 (because SG did not perform any work with respect to defendant T-T-Mobile), and the professional time the attorneys and staff of CC spent prosecuting the claims against Sprint from September 1, 2017, until March 1, 2019 ("the three-defendant period"). In this period, discovery began in earnest. In responding to discovery on behalf of Plaintiffs, and in propounding discovery to defendants, there was substantial overlap between the defendants. We cannot reasonably apportion the time spent prosecuting the claims against any of the three Defendants.

Table 2: Professional time in the three-defendant period

Law Grad.	Firm	2019 Hourly Rate	Hours	Attorneys' Fees
Timberger				
Black, Richard S.	Partner	\$690	224.30	\$143,795
Born, Amanda	Partner	\$660	1,821.30	\$1,092,780
Clifton, Bryan J.	Partner	\$600	568.50	\$340,980
Carroll, Bill	Partner	\$1,960	532.20	\$1,011,180
Conroy, Jordan	Partner	\$800	1,856.40	\$1,113,920
Edgman, Anne	Partner	\$865	678.75	\$587,119
Kufpanick, Ryan	Partner	\$750	109.70	\$82,275
Lamprey, Wayne	Partner	1980	Consent	
Shepard, Steven	Partner	2087	Consent	
Sulzmann, Alan	Partner	2084	Consent	
Corvus, Jesse	Associate	2015	Consent	
Hurin	Associate	2016	Consent	
McMinn, Chris	Associate	2014	Consent	
Nail, Rohit	Associate	2014	Consent	
Neeker, Halie	Associate	2015	Consent	
Park, Gloria	Associate	2016	Consent	
Robert, Ari	Associate	2014	Consent	
Speer, Nicholas	Associate	2014	Consent	
Xi, Meng	Associate	2011	Consent	

Law Grad.	Firm	2019 Hourly Rate	Hours	Attorneys' Fees
Timberger				
Vampolsky, Ari	Associate	2012	Consent	
Davis II, Brandon	Attorney	2016	Consent	
Hornalm, Kevin C.	Attorney	2010	Consent	
Howell, Chase	Attorney	2015	Consent	
Mobson, Rama	Attorney	2015	Consent	
Samuels, Chelsea	Attorney	2014	Consent	
Stankovsky, Alex	Attorney	1996	Consent	
Arreola, Norberto	Paralegal	n/a	Consent	
Chokshi, Anshika	Paralegal	n/a	Consent	
Theory, Christopher	Paralegal	n/a	Consent	
Leblon, Janice	Paralegal	n/a	Consent	
Shubik, Rodney I.	Paralegal	n/a	Consent	
Yang, Karen	Paralegal	n/a	Consent	

53. Accordingly, in the three-defendant period, lead counsel put in 29,896 hours that totaled \$15.24 million in attorneys' fees at present rates.

54. The total attorney time and fees attributable to Plaintiffs' claims against Sprint, as set forth in Tables 1 and 2 above, can therefore be summarized as set forth in Table 3 below.

Period	Total Hours	Total Fees
Four-Defendant Period Time and Fees	8,705	\$6,198,514
Three-Defendant Period Time and Fees	29,896	\$15,238,075
<b>Total</b>	<b>38,601</b>	<b>\$21,436,589</b>

55. All the work claimed by Counsel was necessary, and was performed by skilled and able counsel, who appropriately organized the work, with a significant portion of the work performed by associates and legal staff. Timberger's have demonstrated their high levels of skill

1 and have worked to avoid undue duplication of effort or inefficiency. In the exercise of billing  
 2 judgment, I have eliminated the time of professionals who billed fewer than 50 hours to the matter.  
 3 56. Relator's counsel has spent over six years investigating, prosecuting, and settling this  
 4 case against Sprint on a fully contingent basis, receiving no compensation for the duration of the  
 5 action and fronting significant litigation expenses. Relator's counsel paid the wages of lawyers and  
 6 other legal staff over the course of several years to fund the prosecution of this case. The time and  
 7 labor required for this matter, committed on a contingent basis, precluded Relator's counsel from  
 8 productive work on other whistleblower cases.

9 57. In addition, Relator's counsel has fronted necessary litigation expenses, as set forth in  
 10 Table 4 below. These financial outlays include but are not limited to expenses related to expert  
 11 witnesses, court reporters, filing fees, electronic discovery, legal research, telephone calls, postage,  
 12 and travel. I have reviewed the costs and expenses incurred by all timekeepers and believe each of  
 13 the costs incurred was directly related and necessary to the prosecution of this case. I have  
 14 eliminated mediation and notice costs incurred with respect to the T-Mobile settlement. Plaintiffs  
 15 will continue to incur costs attributable to the Sprint settlement, including mailing and notice costs.

*Table 4: Total Litigation Costs and Expenses*

Cost Category	Total Incurred
Expert Fees	3,776,533.03
Document Processing	335,463.35
Depositions & Court Reporters	177,047.76
Court Fees	14,560.98
Postage, Delivery & Messenger	18,098.54
Research & Database Access	47,512.06
Telecommunications	7,921.19
Travel & Meals	285,187.98
Discovery Referee & Mediation	134,301.72
<b>Totals</b>	<b>\$4,386,587.21</b>

16 58. The total attorney time and fees incurred by Plaintiffs can therefore be summarized as  
 17 set forth in Table 5 below.

*Table 5: Total Professional Fees and Costs*

	Total Hours	Total Fees or Expenses
Professional Time and Fees	38,601	\$21,416,580
Litigation Costs and Expenses		\$4,386,587
<b>Totals</b>	<b>38,601</b>	<b>\$25,803,167</b>

1 59. The intervenors in this case have agreed to fix the Relator's share at 25% of their  
 2 recoveries, pursuant to California Government Code section 12652(b)(2).  
 3 60. The intervenors have also agreed to compensate lead counsel to represent them in this  
 4 matter by paying lead counsel 8% of their proceeds from the action.  
 5 61. The Relator's participation in this case was, and continues to be, extensive. That is  
 6 true with respect to prosecuting the claims against all the Defendants, in general and to Sprint, in  
 7 particular.  
 8 62. The Relator discovered and reported to the government the fraud at issue, about  
 9 which the government was unaware. The Relator helped the government identify the contracts with  
 10 the Defendants that required the Defendants to provide rate-plan optimization in order to satisfy the  
 11 Defendants' attendant obligation to provide service at the "lowest cost available." The Relator and  
 12 his counsel gathered contract documents and analyzed them to understand the operation of  
 13 agreements that consist of at least six sources of interrelated provisions.

14 63. The Relator also demonstrated that Defendants failed to provide rate-plan  
 15 optimization, which led Defendants to fail to provide the government with the "lowest cost  
 16 available" for wireless services as well. To do so, the Relator brought to bear years of experience in  
 17 the field of telecommunications expense management to show that Defendants did not produce  
 18 genuine rate-plan optimization reports. The Relator knew the Defendants produced a multiplicity of  
 19 reports to their customers that might look like ... and in some cases even be called - rate-plan  
 20 optimization reports. However, the Relator also knew that real optimization reports required specific  
 21 elements that Defendants' reports lacked.

22 64. The Relator and his counsel evaluated the claims of many California government  
 23 entities, reviewing their records and interviewing their employees. More than three dozen California  
 24 political subdivisions intervened in the action, over the designation of the State of California  
 25 65. The Relator's investigation also demonstrated that the same conduct affected the  
 26 governments of the States of Nevada, Hawaii, Montana, Iowa, New Mexico, and Florida, among  
 27 others.  
 28

1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct.

3 Executed this 27th day of September, 2019 at San Francisco, California.



\_\_\_\_\_  
Anne Hayes Hartman

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# Exhibit A







CONSTANTINE CANNON LLP

Anne Hayes Hartman  
Direct Dial: (415) 766-3532  
ahartman@constantinecannon.com

SAN FRANCISCO | NEW YORK | WASHINGTON | LONDON

\_\_\_\_\_, 2019

[Non-Intervenor Customer]

Re: Notice of settlement with defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc., and distribution of settlement proceeds in State of California ex rel. OnTheGo Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless, et al., Case No. 34-2012-00127517 (Sacramento Superior Court)

Dear Sir or Madam:

You are receiving this letter because [NON-INTERVENOR CUSTOMER] is a non-intervening real party in interest ("Non-Intervenor") in *State of California ex rel. OnTheGo Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County. Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint") and Plaintiffs have entered into a Settlement Agreement in the case, and [NON-INTERVENOR CUSTOMER] has been identified as a party that will receive a share of the Sprint settlement payment.

The lawsuit

The lawsuit was filed by Relator OnTheGo Wireless, LLC on July 5, 2012, pursuant to the California False Claims Act ("CFCA"), on behalf of real parties in interest the State of California and political subdivisions identified therein. The lawsuit, which named several defendants, including Sprint, generally alleged that Defendants failed to comply with the terms of cooperative purchasing agreements, including the California Wireless Contract ("CWC") and the Western States Contracting Alliance ("WSCA"), contracts awarded to Defendants to provide wireless equipment and services to California government entities. As relevant here, Plaintiffs allege that the CWC and WSCA agreements, and other agreements related to them, required Sprint to provide its California government customers purchasing wireless services pursuant to those agreements with "rate plan optimization reports" and wireless services at the lowest cost available. Sprint's alleged failure to comply with these provisions resulted in overcharges to those California government customers.

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CONSTANTINE CANNON LLP

[Non-Intervenor Customer], 2019  
Page 2

The settlement

The parties have agreed to settle this case with respect to Sprint only. Copies of documents filed with the Court in support of the settlement, which include the Settlement Agreement, are included herewith.

To receive the full amount of the share allocated to a Non-Intervenor in the Proposed Allocation, if any, the Non-Intervenor must execute a Consent Page in the form attached hereto and return the executed Consent Page to Plaintiffs' counsel by **February 18, 2020**. By doing so, a Non-Intervenor affirmatively consents to the terms of the Settlement Agreement, including the general release contained therein. Original signatures are not required. The executed Consent Page may be returned to Plaintiffs' counsel by the following methods:

Mail to: Anne Hartman  
Constantine Cannon LLP  
150 California Street, Suite 1600  
San Francisco, CA 94111

Fax to: (415) 639-4002

E-mail to: [ahartman@constantinecannon.com](mailto:ahartman@constantinecannon.com)

If a Non-Intervenor does not execute the Consent Page, and therefore does not agree to be bound by the Terms of the Settlement Agreement, then the Non-Intervenor will a) receive only 90% of the amount allocated to it in the Proposed Allocation and b) release only the specific claims Plaintiffs asserted under Government Code section 12651(a) in this litigation.

In addition, Plaintiffs will apply to the Court for a Relator's share pursuant to California Government Code section 12652(g)(3) and attorney fees pursuant to California Government Code section 12652(g)(8). As set forth in the Settlement Agreement and Proposed Allocation, Plaintiffs are requesting a Relator's share of 45% with respect to any amounts allocated to Non-Intervenors, and have entered into a settlement agreement with Sprint to receive attorney's fees in the amount of \$2,000,000.

Hearing

The Court has set a hearing for final approval of the Settlement Agreement for March 17, 2020 at 1:30 p.m., to be held in Department 92 of the Sacramento Superior Court, located at 9605 Kiefer Boulevard in Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement Agreement – including but not limited to the dismissal of the Civil Action with prejudice as to Sprint, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs' counsel – are in all respects fair, adequate, and reasonable, and in the best

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CONSTANTINE CANNON LLP

[Non-Intervenor Customer] 2019

Page 3

Interests of the parties involved, serve the public purposes behind the CFCA, and should be finally approved.

How to object

The Court has ordered that any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Pursuant to the Court's order, objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court only if, on or before March 4, 2020, a Non-Intervenor files written notice of the intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and shall serve copies thereof, together with proof of service, on or before said date upon counsel for Plaintiffs and Sprint.

Additional information

If you have any questions about this notification and settlement payment, or the terms of the settlement agreement, please contact Anne Hartman at (415) 766-3332. If the recipient of this letter is not an attorney who represents [ENTITY] in civil legal proceedings, you may want to consult with such counsel.

Sincerely,

Anne Hayes Hartman

NW00033403150

**CONSENT AND RELEASE BY NON-INTERVENOR**

The undersigned has received and reviewed a copy of the Settlement and Release Agreement executed by and between Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint"), Relator OnTheGo and Nextel, LLC, and the political subdivisions that intervened in *State of California ex rel. Wireless, LLC, and the political subdivisions that intervened in State of California ex rel. OnTheGo Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County ("Settlement Agreement"), the Notice of Proposed Settlement, and the Court's Preliminary Approval Order. The undersigned hereby represents and warrants that he or she is fully authorized to provide binding consent on behalf of the Non-Intervenor identified below. By signing below and returning this document to Plaintiffs' counsel pursuant to the terms of and by the deadline set forth in the Court's Preliminary Approval Order, the identified Non-Intervenor hereby agrees to be bound by the terms of the Settlement Agreement, including specifically the releases contained therein, and to be treated as a Party to the Settlement Agreement for all relevant purposes.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of: \_\_\_\_\_

\_\_\_\_\_  
Non-Intervenor Name

NW00033403150

Anne Hayes Harriman  
Direct Dial: (415) 766-3532  
aharriman@constantinecannon.com

\_\_\_\_\_, 2019

[Non-Intervenor Non-Customer]

Re: Notice of settlement with defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc., and distribution of settlement proceeds in State of California ex rel. OnTheGo Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless, et al., Case No. 34-2012-00127517 (Sacramento Superior Court)

Dear Sir or Madam:

You are receiving this letter because [NON-INTERVENOR NON-CUSTOMER] is a non-intervening real party in interest (“Non-Intervenor”) in *State of California ex rel. OnTheGo Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County. Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, “Sprint”) and Plaintiffs have entered in to a Settlement Agreement in the case.

[NON-INTERVENOR NON-CUSTOMER] has been identified as a party that did not make purchases from Sprint under the contracts at issue in the case during the relevant time period, and therefore will not receive a share of the Sprint settlement payment. No further action is required from you at this time. However, if you would like more information about the settlement, or if you would like to object to the settlement:

**Download Filings Regarding Settlement**

Copies of documents filed with the Court in support of the settlement, which include the Settlement Agreement and Addendum, may be downloaded at: [WEBSITE ADDRESS](#). In addition, you may contact counsel identified below to obtain the documents.

**Hearing**

The Court has set a hearing for final approval of the Settlement Agreement for **March 17, 2020** at 1:30 p.m., to be held in Department 92 of the Sacramento Superior Court, located at 9605 Kiefer Boulevard in Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement Agreement – including but not limited to the dismissal of the Civil Action with prejudice as to Sprint, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs’ counsel – are in all respects fair, adequate, and reasonable, and in the best interests of the parties involved, serve the public purposes behind the CFCA, and should be finally approved.

# Exhibit C

CONSTANTINE CANNON LLP

[Non-Intervenor Non-Customer]

Page 2, 2019

How to object

The Court has ordered that any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Pursuant to the Court's order, objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court only if, on or before March 4, 2020, a Non-Intervenor files written notice of the intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and shall serve copies thereof, together with proof of service, on or before said date upon counsel for Plaintiffs and Spirit.

Additional information

If you have any questions about this notification, or the terms of the settlement agreement, you may contact counsel for the Relators and Intervenor:

Anne Hartman  
Constantine Cannon LLP  
150 California Street, Suite 1600  
San Francisco, CA 94111  
Telephone: (415) 766-3532

E-mail: [ahartman@constantinecannon.com](mailto:ahartman@constantinecannon.com)

If the recipient of this letter is not an attorney who represents [NON-INTERVENOR NON-CUSTOMER] in civil legal proceedings, you may want to consult with such counsel.

Sincerely,

Anne Hayes Hartman

Exhibit D

**Term Sheet Between Relator and Sprint, Subject to Approval by California Intervenor  
and Nevada.**

1. Sprint to pay \$10,500,000.00 to California Intervenor who purchased from Sprint, California Non-intervenor who purchased from Sprint, and Nevada. Such payment to occur within 7 days of the effective date, as set forth in a forthcoming Settlement Agreement.
2. Sprint to provide statement of revenue received from intervenors and non-intervenor in the California litigation, and intervenors in the Nevada litigation, on an entity-by-entity basis, between January 1, 2007 and December 31, 2018, who received services under any of the terms and conditions of the CWC and WSCA contracts, whether there is a BA, individual user agreement, or not, including but not limited to entities recorded in Sprint's database as having received services using CWC and/or WSCA rate plans.
  - A. With respect to the California litigation, Sprint's revenue statement may confirm the accuracy of the Billing Summary reflected in Exhibit 10 to Plaintiffs' Mediation Statement and make any requisite corrections.
  - B. This statement may be designated as Confidential pursuant to the Stipulated Protective Order, but the parties agree that it is not subject to any claim of mediation or settlement privilege, and further agree that it can be disclosed to any intervenor or non-intervenor who agrees in writing to maintain the confidentiality of the document.
3. Settlement funds to be distributed among (1) parties (Intervenor, non-intervenor, and Relator) named in Second Amended Complaint in California, and (2) Relator and current intervenor(s) named in the currently operative Complaint and/or Complaint-in-Intervention in Nevada in settlement of all claims asserted. Sprint to take no position

with respect to allocation of settlement amount between and among Relator, California Intervenor and Non-intervenor, and Nevada.

4. No admission of liability by Sprint.
5. This settlement agreement subject to court approvals as required by applicable law, including but not limited to CFCA, Nevada False Claims Act, and other state False Claims Acts.
6. California Intervenor, Nevada, and Relator will dismiss with prejudice all claims asserted against Sprint.
7. Relator will take no action and will not pursue the dismissed claims in Florida against Sprint and will terminate the tolling agreement with Sprint regarding the Florida claims.
8. Relator will dismiss without prejudice claims asserted on behalf of non-intervenor in the Nevada action against Sprint, subject to court approval if necessary.
9. Mutual general releases between Sprint, Relator, California Intervenor, and Nevada for claims arising from or relating to covered conduct (Covered Conduct: Sprint failed to comply with the CWC and WSCA contracts, and participating addenda thereto, with respect to provisions that Plaintiffs allege required Sprint to provide government customers purchasing wireless services from Sprint pursuant to those agreements with 'optimization reports' and wireless services at the 'lowest cost available,' thereby allegedly overcharging those government customers).
10. Plaintiffs will propose to the court in California that:
  - A. All CFCA claims by non-intervenor against Sprint will be dismissed with prejudice.

- B. Non-Intervenor will receive only 90% of their settlement allocation unless they affirmatively join the settlement on the same terms as Intervenor with respect to all other claims against Sprint, including the general release outlined in paragraph 9 above.
- C. Any reduced settlement payments to non-intervenor who choose not to affirmatively opt-in will not reduce the total settlement payment by Sprint, but instead shall be reallocated by Plaintiffs to Intervenor and those non-intervenor who have opted in.
- 11. Plaintiffs will propose to the court in Nevada that:
  - A. All False Claims Act claims by non-intervenor against Sprint will be dismissed without prejudice.
  - B. Should the Nevada court decline to approve this dismissal without prejudice, this paragraph 12 is severable from this Settlement Agreement. Under no circumstances shall Plaintiffs be required to allocate any settlement funds to Hawaii, Iowa, Montana, and New Mexico. Any payment to obtain the settlement of claims asserted by Hawaii, Iowa, Montana, and New Mexico shall be the sole responsibility of Sprint.
- 12. This Term Sheet is subject to approval of California Intervenor and Nevada, to be obtained by Plaintiffs as soon as practicable.
- 13. Formal settlement agreement to be negotiated, but settlement binding as of execution of term sheet, subject only to conditions set forth herein. This agreement is admissible pursuant to Cal. Evid. Code § 1123 and other applicable law.

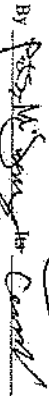
3 of 5

- 14. Counsel for Plaintiffs and Relator represent that they are not pursuing any pending False Claims Act lawsuits against Sprint regarding the WISCA contracts, other than the California Litigation and the Nevada Litigation.
- 15. Upon signing of this Term Sheet by Relator and Sprint, the parties' counsel shall notify the courts in the California and Nevada actions of this settlement in principle and jointly request an immediate stay of all claims against Sprint, to remain in effect until final approval is obtained in both the California and Nevada actions. During the period of any such stay of the plaintiffs' claims against Sprint, any applicable "5-year" rule shall be tolled. Upon execution of this Term Sheet, Sprint shall not take further action in the California and Nevada actions, other than (a) to effectuate finalization of the Settlement Agreement and requisite court approval; and/or (b) as required by court process. The Releasing Plaintiffs further agree not to take further action related to Sprint other than (a) to effectuate finalization of the Settlement Agreement and requisite court approval; and/or (b) as required by court process. This provision shall not affect in any way Sprint's actions in other pending litigation which is not subject to this Term Sheet.
- 16. Should any dispute arise out of the finalization of the Settlement Agreement, the parties agree to attempt to mediate the dispute with the Hon. Gary Fees, or other neutral appointed by him if he is unavailable.

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AGREED TO AND ACCEPTED:

  
SECRETARY

By:  for Council

Date: 2-28-19

  
ON THE DO WHIRELESS LTD

By: Jeffrey Smith, Its Managing Member

By: \_\_\_\_\_

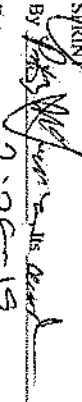
Date: 2-28-19

Exhibit E

Term Sheet Between Susman Godfrey LLP, Constantine Cannon LLP, and Sprint.


1. Sprint and Relator having executed the Term Sheet attached hereto as Exhibit A ("False Claims Act Settlement"), Susman Godfrey LLP and Constantine Cannon LLP agree as follows:
  - A. Sprint to pay \$2,000,000 to Relator's counsel Susman Godfrey LLP and Constantine Cannon LLP in settlement of all claims for statutory attorneys fees and costs under applicable state False Claims Acts. Payment shall be made within 7 days of receipt of requisite Court approval(s) of the False Claims Act Settlement.
  - B. Upon Sprint's payment, Susman Godfrey LLP and Constantine Cannon LLP release all claims for statutory attorneys' fees and costs against Sprint.
  - C. No admission of liability on behalf of Sprint.
2. Formal settlement agreement to be negotiated, but settlement binding as of execution of Term Sheet, subject only to conditions set forth herein. This agreement is admissible pursuant to Cal. Evid. Code §1123 and other applicable law.


AGREED TO AND ACCEPTED:

SPRINT  
 By:   
 Date: 2-28-19

  
 ONTHEGOW/RELEASES LLC  
 By: Jeffrey Smith, Its Managing Member.

By: \_\_\_\_\_  
 Date: 2-24-19

  
 SUSMAN GODFREY LLP  
 By: P. H. Grady, Its Partner  
 Date: 2/28/19

  
 CONSTANTINE CANNON LLP  
 By: Donalys J. Perera  
 Date: 2/28/2019

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Settlement Agreement") is entered into by and between, on the one hand, the Regents of the University of California, City of Chino, City of Corona, City of Fontana, City of Fresno, City of Long Beach, City of Oxnard, City of Rancho Cucamonga, City of Ripon, City of Riverside, City of Sacramento, City of San Bernardino, City of San Mateo, City of Santa Rosa, City of Vernon, Los Angeles County, Madera County, Marin County, Orange County, Riverside County, Sacramento County, San Bernardino County, Santa Cruz County, Sonoma County, Stanislaus County, Yuba County, San Diego Unified School District, Santa Ana Unified School District, Sonoma County Water Agency, Woodbridge Fire District (collectively, the "Intervenor"), the Board of Trustees of the California State University ("CSU"), and OnTheGo Wireless, LLC ("Relator"), on its own behalf and on behalf of the "Non-Intervenor," defined to mean the State of California, the government entities listed in Exhibit A as Non-Intervening Real Party in Interest Political Subdivision Government Plaintiffs, and those Political Subdivisions that initially intervened and subsequently withdrew (the Relator, CSU, and the Intervenor, collectively, "Plaintiffs"), and, on the other hand, Nextel West Corp. (as successor to Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications) and Sprint Solutions, Inc. (collectively, "Sprint"), through their authorized representatives.

### **RECITALS**

1. Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications, was a Delaware corporation, with its principal place of business in Kansas,<sup>1</sup> and Sprint Solutions, Inc.,

<sup>1</sup> Nextel of California, Inc. merged into Nextel West Corp. in May 2018, with Nextel West Corp. as the surviving entity.



is a Delaware corporation with its principal place of business in Kansas. Sprint provides wireless services and equipment.

2. On or about October 1, 2005, the State of California entered into the California Wireless Contract with Sprint (the "CWC Contract") for the purchase of wireless equipment and services. In addition, the Western States Contracting Alliance ("WSCA"), acting by and through the State of Nevada, awarded Sprint Contract #1523 and Contract #1907 (collectively, the "WSCA Contracts") for the purchase of wireless equipment and services. The State of California and Sprint executed a Participating Addendum to the WSCA Contracts, Master Price Contract #7-10-70-15 (the "California Participating Addendum"), which incorporated the terms of the WSCA Contracts and (at times) California DGS RFO 1070.

3. On July 5, 2012, Relator filed under seal a *quid iam* action in the Superior Court for Sacramento County, captioned *State of California ex rel. OnTheGo Wireless, LLC v. Celco Partnership db/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (the "Civil Action"). Pursuant to the California False Claims Act ("CFCA"), on behalf of real parties in interest the State of California and political subdivisions identified therein (the "Government Entities") naming as defendants Celco Partnership db/a Verizon Wireless, a Delaware general partnership; Nextel of California, Inc. db/a Sprint Nextel and Nextel Communications, a Delaware corporation; Sprint Solutions, Inc., a Delaware corporation; New Cingular Wireless National Accounts, LLC, db/a Cingular Wireless n/a AT&T Mobility National Accounts, LLC, a Delaware limited liability company; T-Mobile USA, Inc.; and Doss 1-50 (collectively, "Defendants").

4. Pursuant to the CFCA, following receipt of the original complaint, the California Attorney General was required to provide a copy of Relator's original complaint to the political subdivisions identified therein. All Government Entities have had an opportunity to intervene.

5. The Civil Action was unsealed in December 2015. The Second Amended Complaint and Complaint in Intervention was filed on May 6, 2016. A Third Amended Complaint ("TAC") was filed on June 28, 2019.

6. The TAC alleges in relevant part that Sprint failed to comply with the CWC and WSCA Contracts and the California Participating Addendum with respect to provisions that Plaintiffs allege required Sprint to provide its California government customers purchasing wireless services from Sprint pursuant to those agreements with "rate plan optimization reports" and wireless services at the lowest cost available, thereby allegedly overcharging those California government customers (the "Covered Conduct"). The Covered Conduct includes all allegations in the Civil Action (in the TAC or any prior Complaint) relating to Sprint, including Sprint's alleged failure to comply with the CWC and WSCA contracts, and participating addenda thereto, with respect to provisions that Plaintiffs allege required Sprint to provide government customers purchasing wireless services from Sprint pursuant to those agreements with "optimization reports" and wireless services at the "lowest cost available," thereby allegedly overcharging those government customers.

7. The TAC pleads claims a) on behalf of Intervenor for violations of the CFCA, for unfair business practices under California Business & Professions Code §§ 17200 et seq., for breach of written contract, and for unjust enrichment; b) on behalf of CSU for unfair business practices under California Business & Professions Code §§ 17200 et seq., for breach of written contract, and for unjust enrichment; c) by Relator, pursuant to the provisions of Cal. Government

Code § 12652(9)(1), for violations of the CPRA on behalf of itself and Non-Intervenor. Plaintiffs seek damages, treble damages, civil monetary penalties, restitution, injunctive relief, attorneys' fees and costs, and a relator's share pursuant to Cal. Gov't Code § 12652(e).

8. On November 12, 2012, Relator filed under seal a *qui tam* action, *State of Nevada et al. On The Go Wireless LLC v. Calico Partnership et al.*, Case No. CV 12-03093, in Nevada District Court, County of Washoe (the "Nevada Action"), on behalf of the State of Nevada and certain of its political subdivisions, the State of Hawaii<sup>1</sup> and the counties of Oahu, Maui, Hawaii, and Kauai, the State of Iowa, the State of Montana and certain of its political subdivisions, and the State of New Mexico, pursuant to the false claims acts of each of those jurisdictions, naming as defendants Calico Partnership *et al.* Verizon Wireless, a Delaware general partnership; Sprint Solutions, Inc., a Delaware corporation; New Cingular Wireless National Accounts, LLC, *et al.* Cingular Wireless *d/b/a* AT&T Mobility National Accounts, LLC, a Delaware limited liability company, and T-Mobile. The State of Nevada subsequently intervened in that action, and the State of Nevada and Relator (the "Nevada Plaintiffs") are the current Plaintiffs in the Nevada action.

9. This Settlement Agreement is neither an admission of liability or wrongdoing by Sprint nor a concession by Relator or the other Plaintiffs that their claims are not well founded. Sprint denies all Plaintiffs' allegations, including those in the Civil Action and the Nevada Action.

10. This Settlement Agreement resulted from good faith, arm's-length settlement negotiations, including a full-day mediation session before the Honorable Gary Fees.

11. The Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims. This

Settlement Agreement is inadmissible as evidence against any party except to enforce the terms of the Settlement Agreement.

12. To avoid the delay, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as set forth herein.

#### DEFINITIONS

13. "Settling Government Entities" means Intervenor, CSII, and the Consenting Non-Intervenor, as that term is defined in Paragraph 29 below.

14. "Settling Plaintiffs" means the Settling Government Entities and Relator.

15. "Parties" means Settling Plaintiffs and Sprint.

16. "Court" means the Superior Court of Sacramento County.

17. "Effective Date" means the day that this document has been executed by the counsel identified below, provided, however, that the Settlement Agreement shall not become effective unless and until: a) the Finalization Date, as that term is defined in Paragraph 35; and b) the Settlement Amount, as that term is defined in Paragraph 19, is released on the Distribution Date, as that term is defined in Paragraph 36.

18. The "Proposed Allocation," attached hereto as Exhibit A, sets forth the shares of the Settlement Amount that Plaintiffs propose to allocate to Intervenor, Non-Intervenor, Relator, and Plaintiffs' counsel, and will be submitted to the Court in support of this Settlement Agreement. The Proposed Allocation is a matter that has been (and will be) handled separately by and among Plaintiffs without Sprint's involvement. Sprint shall not be deemed to have endorsed or been responsible for any allocation proposed therein or the use of the proceeds by

any ultimate recipient. As part of the Settlement Agreement, Sprint will not contest the Proposed Allocation or any part of it.

#### **TERMS AND CONDITIONS**

##### **Settlement Amount, Release, and Dismissal with Prejudice**

19. The "Settlement Amount" to be paid by Sprint to Plaintiffs on the terms and conditions set forth herein is \$9,222,391.<sup>2</sup>

20. In exchange for and in consideration of Sprint's agreement to pay the Settlement Amount, the Settling Plaintiffs agree to dismiss their claims in the Civil Action against Sprint with prejudice as set forth herein. It is the Parties' intention and a condition of this Settlement Agreement that all claims of the Settling Plaintiffs against Sprint in the Civil Action be dismissed with prejudice. The Parties, through their counsel, shall execute a Judgment by Stipulation ("Stipulated Judgment") in the form attached as Exhibit E, to be submitted to the Court following Final Approval of this settlement as set forth below.

21. In consideration of the obligations of Sprint set forth in this Settlement Agreement, and conditioned upon Sprint's payment of the Settlement Amount, the Settling Government Entities, on behalf of themselves, any and all of their governing authorities, boards, commissions, officials, officers, directors, managers, representatives, employees, contractors, administrators, departments, divisions, agencies, instrumentalities, fiduciaries, accountants, auditors, consultants, insurers and reinsurers, principals, law firms, attorneys, brokers, vendors,

<sup>2</sup>The Parties agreed to settle both the Nevada Action and the Nevada Action for one total payment, plus a separate payment for attorneys' fees. The allocation of the Settlement Amount between the Civil Action and the Nevada

Action is a matter that has been (and will be) handled separately by and among Plaintiff's without Sprint's involvement. Sprint was not consulted about the allocation of the Settlement Amount nor has it had any input into the allocation. For this reason, Sprint shall not be deemed to have endorsed or been responsible for any such allocation or the use of the proceeds by any ultimate recipient. As part of the Settlement Agreement, however, Sprint will not contest such allocation.

partners, privies, agents, affiliates, predecessors, successors and assigns, as well as the heirs, personal representatives, executors, administrators, predecessors, successors, and assigns of each of the foregoing, in each case past, present, or future (the "Government Entity Releasing Parties"), release Sprint together with all of its current and former affiliates, parents, members and subsidiaries, and their respective current or former owners, shareholders, parents, members, subsidiaries, affiliates, divisions, officers, directors, employees, contractors, administrators, brokers, vendors, partners, privies, agents, managers, representatives, fiduciaries, accountants, auditors, consultants, insurers and reinsurers, principals, law firms, and attorneys, and the heirs, personal representatives, executors, administrators, trustees, beneficiaries, predecessors, successors, subrogees and assigns (direct or indirect) of any of them, in each case past or present (the "Sprint Released Parties"), from any and all claims, rights, actions, suits, grounds for complaint, causes of action, arbitrations, liens, demands, controversies, grievances, allegations, accusations, judgments, and liabilities of any kind or nature whatsoever, as well as all forms of relief, including all remedies, costs, losses, liabilities, damages (whenever incurred and of any kind whatsoever, including compensatory, statutory, liquidated, exemplary, or punitive damages), wages, benefits, debts, expenses, penalties, interest, and attorneys' and other professionals' fees and disbursements, and any other form of relief or remedy in law, equity, or whatever kind or nature and however demonstrated, whether sealed or unsealed, in law or equity, in contract, tort, or otherwise, known or unknown, suspected or unsuspected, anticipated or unanticipated, and asserted or unasserted, foreseen or unforeseen, including all direct or indirect liability (including, without limitation, vicarious liability) that the Government Entity Releasing Parties ever have, had, or may have arising out of or in any way connected with the Covered Conduct as to the

Sprint Released Parties, including but not limited to claims under the CFCA, or on theories of breach of contract, unjust enrichment, or unfair business practices.

22. The Relator on behalf of itself, together with all of its current and former affiliates, parents, members and subsidiaries, and their respective current or former owners, shareholders, partners, members, subsidiaries, affiliates, divisions, officers, directors, employees, contractors, administrators, brokers, vendors, partners, proxies, agents, managers, representatives, fiduciaries, accountants, auditors, consultants, insurers and reinsurers, principals, law firms, and attorneys, and the heirs, personal representatives, executors, administrators, trustees, beneficiaries, predecessors, successors, subrogees and assigns (direct or indirect) of any of them; in each case past, present or future ("Relator Releasing Parties"), release the Sprint Released Parties from any and all claims, rights, actions, suits, grounds for complaint, causes of action, arbitrations, liens, demands, controversies, grievances, allegations, accusations, judgments, and liabilities of any kind or nature whatsoever, as well as all forms of relief, including all remedies, costs, losses, liabilities, damages (whenever incurred and of any kind whatsoever, including compensatory, statutory, liquidated, exemplary, or punitive damages), wages, benefits, debts, expenses, penalties, interests, and attorneys' and other professionals' fees and disbursements, and any other form of relief or remedy in law, equity, or whatever kind or nature and however denominated, whether sealed or unsealed, in law or equity, in contract, tort, or otherwise, known or unknown, suspected or unsuspected, anticipated or unanticipated, and asserted or unasserted, foreseen or unforeseen, including all direct or indirect liability (including, without limitation, vicarious liability) that the Relator Releasing Parties ever have, had, or may have arising out of or in any way connected with the Covered Conduct, including but not limited to claims under the CFCA, or on theories of breach of contract, unjust enrichment, or unfair business practices.

23. The releases set forth in Paragraphs 21-22 above expressly do not encompass:  
a) Claims not arising out of and not in any way connected with the Covered Conduct as to the Sprint Released Parties, including: any civil or administrative liability arising under state or municipal law; any criminal liability; any civil or administrative liability that the Sprint Released Parties have or may have under any state or municipal statute, regulation, or rule not covered by the Settlement Agreement; any liability arising out of litigation pending as of the Effective Date, other than the Civil Action; any liability based on obligations created by this Settlement Agreement, and any liability for failure to deliver goods or services due; provided that any such liability does not arise out of and is not in any way connected with the Covered Conduct.

b) Claims that the Settling Plaintiffs do not have the authority to release, including claims belonging to Non-Consenting Non-Intervenor, as that term is defined in Paragraph 29 and any California entities who are not parties to this Agreement, save for the specific claims Relator asserted on behalf of the Non-Consenting Non-Intervenor under Government Code section 12551(a) in the Civil Action.

24. In consideration of the obligations of the Plaintiffs set forth in this Settlement Agreement, and conditioned upon Plaintiffs fulfilling their obligations in this Settlement Agreement, Sprint on behalf of itself and the Sprint Released Parties (the "Sprint Releasing Parties") fully and finally releases the Government Entity Releasing Parties and the Relator Releasing Parties from any and all claims, rights, actions, suits, grounds for complaint, causes of action, arbitrations, liens, demands, controversies, grievances, allegations, accusations, judgments, and liabilities of any kind or nature whatsoever, as well as all forms of relief, including all remedies, costs, losses, liabilities, damages (whenever incurred and of any kind

whatsoever, including compensatory, statutory, liquidated, exemplary, or punitive damages), wages, benefits, debts, expenses, penalties, interest, and attorneys' and other professionals' fees and disbursements, and any other form of relief or remedy in law, equity, or whatever kind or nature and however denominated, whether sealed or unsealed, in law or equity, in contract, tort, or otherwise, known or unknown, suspected or unsuspected, anticipated or unanticipated, and asserted or unasserted, foreseen or unforeseen, including all direct or indirect liability (including, without limitation, vicarious liability) that Sprint ever has asserted, could have asserted, or may assert in the future against them, arising out of the Civil Action and their investigation and prosecution thereof, or in any way connected with the Covered Conduct. The releases in this paragraph expressly do not encompass claims for amounts due on goods or services sold or provided.

25. The releases contained in paragraphs 21 through 24 above are general releases of claims arising out of or in any way connected with the Covered Conduct as to Sprint, and the Parties intend and agree that each shall be interpreted, construed, and enforced as such. Without limiting the foregoing, the Parties, having been fully advised by counsel of the contents of Section 1542 of the Civil Code of the State of California, expressly waive and relinquish all rights and benefits afforded by Section 1542, and do so understanding and acknowledging the significance of such specific waiver of Section 1542. Section 1542 of the Civil Code of the State of California states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release of claims, each Party expressly acknowledges that this Settlement

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Agreement is intended to include in its effect, without limitation, all claims arising out of or in any way connected with the Covered Conduct as to Sprint that such Party does not know of or suspect to exist in such Party's favor at the time of signing this Settlement Agreement.

26. For the avoidance of doubt, neither the Sprint Released Parties nor the Sprint Releasing Parties includes T-Mobile USA, Inc., together with all of its current and former affiliates, parents, members and subsidiaries, and their respective current or former owners, shareholders, parents, members, subsidiaries, affiliates, divisions, officers, directors, employees, contractors, administrators, brokers, vendors, partners, privies, agents, managers, representatives, fiduciaries, accountants, auditors, consultants, insurers and reinsurers, principals, law firms, and attorneys, and the heirs, personal representatives, executors, administrators, trustees, beneficiaries, predecessors, successors, subrogees and assigns (direct or indirect) of any of them, in each case past or present, that may become part of a combined company if Sprint and T-Mobile consummate the planned merger of the companies announced on or around April 29, 2018. Notwithstanding the above provision, to the extent that any T-Mobile entity becomes a "successor" to a Sprint entity subject to this Agreement after a merger of the companies, it shall succeed to the obligations (and release provisions) contained herein regarding Sprint Covered Conduct. For the avoidance of doubt, the release provisions in this Agreement, which relate to Sprint Covered Conduct, shall not apply in any way to any claims by Relator and the State of Nevada against T-Mobile USA, Inc., in the Nevada Action regarding conduct other than the Sprint Covered Conduct.

27. Plaintiffs and Sprint hereby covenant and agree that no Party will (i) assert, file, commence, pursue, intervene in, institute, maintain or prosecute any claim related in any way to the Covered Conduct as to Sprint, including (but not limited to) by way of third-party claim,

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crossclaim, or counterclaim, or by right of representation or subrogation, against any other Party; (ii) participate in the assertion, filing, commencing, pursuing, intervening in, instituting, maintaining or prosecuting of any claim related in any way to the Covered Conduct as to Sprint

against any other Party; and (iii) if involuntarily included in any claim related to the Covered Conduct as to Sprint (e.g., in a class action) will withdraw therefrom. For the avoidance of doubt, this covenant is not limited to California, Nevada, or the states encompassed by the Civil Action and/or the Nevada Action, but extends to all jurisdictions anywhere in the United States or the world. Relator further covenants and agrees that it will terminate its rolling agreement with Sprint regarding the Florida claims it previously dismissed without prejudice.

#### Settlement Approval and Joinder Procedures

28. Within fourteen (14) days of obtaining approval for this Settlement Agreement from all governing bodies of Intervenor and CSI, Plaintiffs shall file a motion with the Court (the "Preliminary Approval and Notice Motion") requesting that the Court enter an order (the "Preliminary Approval Order"), substantially in the form attached as Exhibit B, that (a) preliminarily approves the settlement; (b) approves notice procedures to Non-Intervenor for joinder or objection to the settlement; (c) sets a schedule for final approval of the settlement; and (d) makes such further orders as may be appropriate and necessary to ensure compliance with the terms and conditions of the Preliminary Approval Order.

29. Non-Intervenor to which funds are allocated in the Proposed Allocation, Exhibit A hereto, ("Non-Intervenor Customers") shall be provided the opportunity to consent to the terms of the Settlement Agreement by executing and returning a Consent and Release by Non-Intervenor substantially in the form attached as Exhibit C to this Addendum, within 90 days of the Court's entry of a Preliminary Approval and Notice Order. Non-Intervenor who thereby

choose to participate in the Settlement Agreement shall be referred to as "Consenting Non-Intervenor." All other Non-Intervenor are referred to as "Non-Consenting Non-Intervenor."

30. Any Non-Consenting Non-Intervenor shall be entitled to receive only 90% of the share, if any, that was allocated to it in the Proposed Allocation (the "Non-Consenting Non-Intervenor Portion"). Any Non-Intervenor that wishes to receive the full share allocated to it in the Proposed Allocation must affirmatively consent to this Settlement Agreement and Addendum as provided in Paragraph 29. The remaining portion of the share, if any, that was allocated to the Non-Consenting Non-Intervenor in the Proposed Allocation shall be referred to as the "Non-Consenting Non-Intervenor Remainder." Plaintiffs shall distribute the Non-Consenting Non-Intervenor Remainder to the Intervenor and Consenting Non-Intervenor to whom the Proposed Allocation allocates a share (collectively, the Settling Government Entities, as defined in Paragraph 13), in proportion to each Settling Government Entity's Proposed Allocation of the total Proposed Allocation for all Settling Government Entities. Along with the Motion for Final Approval of Settlement, described in Paragraph 32 below, Plaintiffs shall file with the Court a Final Allocation that reflects the final shares allocated to each Settling Government Entity and Non-Consenting Non-Intervenor.

31. Any Non-Consenting Non-Intervenor are not "Parties" as defined by and used in the Settlement Agreement. Any Non-Consenting Non-Intervenor, any and all of their governing authorities, boards, commissions, officials, officers, directors, managers, representatives, employees, contractors, administrators, departments, divisions, agencies, instrumentalities, fiduciaries, accountants, auditors, consultants, insurers and reinsurers, principals, law firms, attorneys, brokers, vendors, partners, proxies, agents, affiliates, predecessors, successors and assigns, as well as the heirs, personal representatives, executors, administrators, predecessors,

successors, and assigns of each of the foregoing, in each case past, present, or future, are nonetheless bound by Relator's release of the Sprint Released Parties from the specific claims Plaintiff's asserted under Government Code section 12651(a) in the Civil Action, pursuant to California Government Code Section 12652(c)(1). The Non-Consenting Non-Intervenor are not otherwise bound by any of the terms of the Settlement Agreement, including specifically the other releases contained herein.

32. In accordance with the Preliminary Approval Order, Plaintiff's shall file a motion with the Court (the "Motion for Final Approval of Settlement") seeking approval pursuant to the CFCA for an order approving the settlement. The Motion for Final Approval of Settlement shall ask the Court to enter an order (the "Final Approval Order"), substantially in the form attached as Exhibit D, that (a) identifies all Consenting Non-Intervenor; (b) holds that the terms of the Settlement Agreement, including the Final Allocation, are appropriate under the allegations of the Civil Action, taking into account the best interests of the parties involved and the public purposes behind the CFCA, are fair, adequate and reasonable, and were reached in good faith; and (c) makes such further orders as may be appropriate and necessary.

#### Payment and Final Dismissal

33. On the next business day after the Final Approval Order, Plaintiff's shall open an interest-bearing escrow account at US Bank or another mutually acceptable institution ("Escrow Account") and the parties hereby authorize their counsel to enter into an escrow agreement substantially in the form attached as Exhibit F and reflecting the escrow terms set forth in this paragraph ("Escrow Agreement"). No later than seven (7) days thereafter, Sprint shall deposit the Settlement Amount by electronic funds transfer into the Escrow Account. Any and all fees or expenses associated with the Escrow Account shall be paid out of the interest on the account. The Escrow Agreement shall instruct the escrow agent to provide monthly reports to Sprint and

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designated counsel for Plaintiff's concerning the transactions and balance of the Escrow Account. If this settlement is consummated, all amounts in the Escrow Account, including all accrued interest remaining after payment of Escrow Account fees and expenses, shall be paid to Plaintiff's on the Distribution Date, as that term is defined in Paragraph 36, in accordance with the Escrow Agreement. In the event this settlement is not consummated, all amounts in the Escrow Account, including all accrued interest remaining after payment of Escrow Account fees and expenses, shall be returned to Sprint in accordance with the Escrow Agreement. Payment of the Settlement Amount constitutes payment in full by Sprint to compensate all Plaintiff's for any and all losses related in any way to the Covered Conduct and no part of the Settlement Amount is punitive in purpose or effect. The Settlement Amount will be released from escrow on the Distribution Date, as defined below.

34. All Parties agree that entry of judgment is expressly contingent upon:

- a) the Intervenor, through their authorized representatives, obtaining all necessary approvals for this Settlement Agreement from their governing bodies;
- b) the Court granting the Motion for Final Approval of Settlement and entering the Final Approval Order; and
- c) the court in the Nevada Action entering a final approval order regarding the settlement of the Nevada Action as to Sprint.

35. When all conditions for the entry of the Stipulated Judgment have been met, Plaintiff's shall file the Stipulated Judgment with the Court, which may occur on the same day as entry of the Final Approval Order. The "Finalization Date" shall be (a) the date of entry of the Stipulated Judgment by the Court, if there has been no opposition or objection made to the Court; or b) if any person or entity has objected, (i) the date of the passage of the deadline under

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California Rule of Court 8.104(a) to file a notice of appeal or (f) if any notice of appeal has been filed, the date of the final disposition of any such appeal, which disposition approves entry of the Stipulated Judgment.

36. Within five business days of the later of the Finalization Date or the date Sprint deposits the Settlement Amount into the Escrow Account, the Escrow Agent shall release the Settlement Amount pursuant to the Final Allocation approved by the Court ("Distribution Date"). The allocation of the Settlement Amount is a matter that has been (and will be) handled separately by and among Plaintiffs without Sprint's involvement. Sprint was not consulted about the allocation of the Settlement Amount nor has it had any input into the allocation. For this reason, Sprint shall not be deemed to have endorsed or been responsible for any such allocation or the use of the proceeds by any ultimate recipient. As part of the Settlement Agreement, however, Sprint will not contest such allocation.

37. Within seven days of the Finalization Date, Sprint shall pay to Relator's counsel \$2,000,000.00 ("Relator's Attorneys' Fees Amount") in settlement of Relator's claims for reasonable attorneys' fees, costs, and expenses pursuant to Cal. Gov't Code § 12652(a)(8) and any other statute providing for recovery of attorneys' fees, costs, and expenses. The payment shall be made by electronic funds transfer to Constantine Cannon LLP for deposit in account number 76-0223952-2 (bank routing number 226070403) of Constantine Cannon LLP. Constantine Cannon LLP shall provide Sprint with a properly completed and duly executed Form W-9 for that client trust account on or before the date the Motion for Final Approval is filed. The allocation of the Relator's Attorneys' Fees Amount among Plaintiffs' counsel is a matter that has been (and will be) handled separately by and among Plaintiffs' counsel without Sprint's involvement. Sprint was not consulted about the allocation of Relator's Attorneys' Fees

Amount among Plaintiffs' counsel nor has it had any input into the allocation. For this reason, Sprint shall not be responsible for and shall not be deemed to have endorsed any such allocation or the use of the proceeds by any ultimate recipient. Payment of the Relator's Attorney's Fees Amount constitutes payment in full by Sprint for any and all of Relator's attorneys' fees and costs by Sprint. Sprint shall not be liable for and all Plaintiffs waive and release, any other claims for attorneys' fees or costs incurred or to be incurred relating to the claims of any Plaintiffs related in any way to the Covered Conduct.

38. Upon making the payment of the Settlement Amount and Relator's Attorneys' Fees Amount, Sprint shall have no rights to the allocation or distribution of the Settlement Amount or Relator's Attorneys' Fees Amount. Under no circumstances shall Sprint be obligated as a result of this Settlement Agreement, the underlying litigation, or any claim released herein to pay to Plaintiffs, or any of their counsel, by way of damages, penalties, fees, or otherwise, more than the Settlement Amount and the Relator's Attorneys' Fees Amount set forth.

#### Additional Terms of Settlement

39. Should the intervenors' governing bodies or the Court decline to approve all material aspects of the Settlement Agreement, if the Court makes rulings mandatorily altering the terms of the Settlement Agreement, or if for any reason the Court determines not to enter a final judgment consistent with the terms of this Settlement Agreement, then Sprint or Plaintiffs may declare the Settlement Agreement null and void by providing written notice within five business days of any such decision, in which case the Parties shall return to their positions as of the date prior to this Settlement Agreement, the litigation shall proceed as if no settlement had been attempted, except as to any discovery stay ordered in the case, and Sprint shall have no obligation to make any payment, including payment of any portion of the Settlement Amount. However, notwithstanding the foregoing, in the event the Court determines not to enter a final judgment



consistent with the material terms of this Settlement Agreement. Sprint and Plaintiffs shall meet and confer in good faith in an effort to negotiate a revised Settlement Agreement that is mutually acceptable to Sprint and Plaintiffs and consistent with the Court's rulings.

40. Should this Settlement Agreement for any reason not become final, all Parties reserve their rights to make all arguments and defenses whatsoever, including but not limited to challenges to the Relator's ability to proceed on behalf of any or all Non-Intervenors and objections to any attempts to intervene in the litigation (past or future), and each Party agrees that it shall not assert that another Party has waived or is otherwise prevented from asserting any argument or defense by virtue of negotiating, entering, or seeking approval of this Settlement Agreement.

41. The Parties agree that with respect to documents designated as containing Confidential or Highly Confidential Information pursuant to the Protective Order entered in the Civil Action (the "Protective Order") which were produced by Plaintiffs to Sprint and/or which were produced by Sprint to Plaintiffs, the finalization and approval of this Settlement constitutes a final termination of the action between the Parties, and each Party will destroy or return to the producing party any such documents containing Confidential or Highly Confidential Information within 30 days of the Finalization Date in accordance with paragraph 9 of the Protective Order.

The Parties further agree that they continue to be bound by the restrictions in the Protective Order after the Effective Date as provided in paragraph 9a of the Protective Order.

42. This Settlement Agreement does not constitute an admission by any of the Sprint Released Parties, or evidence, of any liability or wrongdoing whatsoever, including, but not limited to, any liability or wrongdoing with respect to any allegations that were or could have been raised in the Civil Action. This Settlement Agreement also does not constitute an

admission by Plaintiff Releasing Parties, or evidence, that they would not have been able to prosecute their claims successfully in the Civil Action. The Parties agree that this Agreement is the result of a compromise within the provisions of California Evidence Code § 1152, and any similar statutes or rules, and shall not be used or admitted in any proceeding for any purpose including, but not limited to, as evidence of liability or wrongdoing by any of the Sprint Released Parties, nor shall it be used for impeachment purposes, to refresh recollection, or any other evidentiary purpose; provided, however, that this paragraph shall not apply to any claims to enforce any provision of this Agreement.

43. This Settlement Agreement is intended to be for the benefit of the Parties only.

44. Aside from the payment of the Relator's Attorneys' Fees Amount as set forth in Paragraph 37 above, each Party shall bear its own legal fees and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.

45. This Settlement Agreement is enforceable regardless of its tax consequences. The Parties make no representations regarding the Settlement Agreement's tax consequences. Each Party is solely responsible for any and all taxes, interest, and penalties due and owing. If any, should any monetary benefit described in this Settlement Agreement and/or any other documents related to this Settlement Agreement, be deemed as taxable.

46. Each Party and signatory to this Settlement Agreement represents that it freely and voluntarily enters into this Settlement Agreement with the benefit of legal counsel and without any degree of duress or compulsion.

47. All questions with respect to the construction or interpretation of the Settlement Agreement and the Parties' rights and liabilities shall be governed by the laws of the State of

California. This Settlement Agreement is enforceable pursuant to Section 664.6 of the California Code of Civil Procedure. The exclusive jurisdiction and venue for any dispute relating to this Settlement Agreement is the Superior Court for the County of Sacramento. This Settlement Agreement and any other document referenced herein or attached hereto is admissible in any action or proceeding to enforce the terms of this Settlement Agreement.

48. This Settlement Agreement is the result of arm's-length negotiation between the Parties, and all Parties, directly and through counsel, have contributed substantially and materially to its preparation. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute, and the canon of contract interpretation set forth in California Civil Code Section 1654 as well as under any other statutes or common law principles of similar effect (both in California and in any foreign jurisdiction) shall not be applied.

49. This Settlement Agreement constitutes the complete agreement between the Parties with respect to resolution of the Covered Conduct and supersedes any and all other prior and contemporaneous oral or written agreements, communications, or representations.

50. This Settlement Agreement is executed without reliance upon any representations, understandings, or commitments, whether formal or informal, or oral or written, by any Party released.

51. This Settlement Agreement may not be amended except by written consent of Sprint and Plaintiff.

52. The undersigned represent and warrant that they are fully authorized to execute this Settlement Agreement on behalf of the Parties so indicated by their signature.

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ATTORNEY'S SIGNATURE

53. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Settlement Agreement.

54. This Settlement Agreement is binding on the Parties' successors, transferees, heirs, and assigns.

55. Facsimiles or PDF copies of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

56. Each Party represents and warrants that:

a) it has the full legal authority, right, and capacity to enter into this Settlement Agreement and to bind the Party to perform its obligations hereunder, including any third-party authorization necessary to release the claims being released hereunder.

b) this Settlement Agreement has been duly and validly executed and delivered by such Party and, assuming due authorization, execution and delivery by the other Parties, constitutes a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms;

c) the execution and delivery of this Settlement Agreement, the performance by such Party of its obligations hereunder, and the consummation of the transactions contemplated hereby, will not: (i) result in the violation by such Party of any statute, law, rule, regulation, or ordinance or any judgment, decree, order, writ, permit, or license of any governmental or regulatory authority applicable to such Party; or (ii) require such Party to obtain any consent, approval or action of any person, which consent, approval, or action has not already been obtained or accomplished by such Party.

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ATTORNEY'S SIGNATURE

d) it has not assigned, subrogated, pledged, loaned, hypothecated, conveyed, or otherwise transferred, voluntarily or involuntarily, any claims based on the Covered Conduct, or any interest in or part or portion thereof, specifically including any rights arising out of claims related to the Covered Conduct, to any other person or entity; and

e) it has read and understands this Settlement Agreement and it has had the opportunity to consult with its attorneys before signing it.

57. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action necessary to effectuate the intent and purposes of, and to carry out the terms of, this Settlement Agreement.

58. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement to be performed by such other Party. No waiver, express or implied, by any Party of any breach or default in the performance by the other Party of its obligations under this Settlement Agreement shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent or contemporaneous, under this Settlement Agreement.

59. All of the exhibits attached to this Settlement Agreement are material and integral parts hereof and are hereby incorporated by reference as if fully set forth herein.

60. The Parties and their respective counsel agree to cooperate fully with one another in order to effect the consummation of the settlement of the Civil Action.

61. Any notices required under this Settlement Agreement shall be provided by e-mail and U.S. mail, as follows:

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NATICK'S RESOLVE

**To Plaintiffs:**  
Wayne T. Lamprey  
wlamprey@constantinecannon.com  
Anne Hayes Hartman  
ahartman@constantinecannon.com  
Ari Yampolsky  
ayampolsky@constantinecannon.com  
Constantine Cannon LLP  
150 California Street, Suite 1600  
San Francisco, California 94111

**To Sprint:**  
John E. Joiner  
jjoiner@wvc.com  
William P. Ashworth  
washworth@wvc.com  
Williams & Connolly LLP  
725 Twelfth Street, NW  
Washington, DC 20005

[SIGNATURE PAGES FOLLOW BEGINNING ON NEXT PAGE]

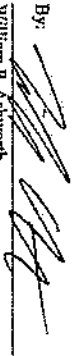
23

NATICK'S RESOLVE

**SIGNATURES**

APPROVED AS TO FORM AND CONTENT:

Dated: WILLIAMS & CONNOLLY LLP

By:   
William P. Ashworth  
Attorney for Sprint Defendants

AGREED:

Dated: SPRINT SOLUTIONS, INC.

By: \_\_\_\_\_  
INSERT NAME  
Is: \_\_\_\_\_

Dated: NEXTEL, WEST CORP.

By: \_\_\_\_\_  
INSERT NAME  
Is: \_\_\_\_\_

**SIGNATURES**


APPROVED AS TO FORM AND CONTENT:

Dated: WILLIAMS & CONNOLLY LLP


By: \_\_\_\_\_  
William P. Ashworth  
Attorney for Sprint Defendants

AGREED:

Dated: SPRINT SOLUTIONS, INC.

By:   
INSERT NAME  
Is: President

Dated: NEXTEL, WEST CORP.

By:   
INSERT NAME  
Is: VICE PRESIDENT

APPROVED AS TO FORM AND CONTENT:

Dated: August 28, 2019

CONSTANTINE CANNON LLP

By:



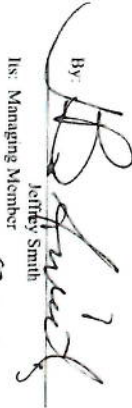
Anne Hayes Hartman  
Attorney for Relator, on behalf of itself and  
political subdivisions identified in the Third  
Amended Complaint, and for Intervenor

AGREED:

Dated:

ONTHEGO WIRELESS, LLC

By:



Jeffrey Smith  
Its: Managing Member

8-28-19

**SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT**


Dated:



Signature



Print Name



Title

On behalf of:



Intervenor Name

SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT

Dated: Sept. 16, 2019

*Myrtle Stansdell*  
Signature

Mitch Lansdell  
Print Name

Interim City Manager  
Title

On behalf of:

City of Corona  
Intervenor Name

SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT

Dated: 9/17/19

*[Signature]*  
Signature

TEAN'S STOKES  
Print Name

Deputy City Attorney  
Title

On behalf of:

City of Fresno  
Intervenor Name



SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT

Dated: 9/17/2019

  
Signature

LEON PAGE  
Print Name

COUNTY COUNSEL  
Title

On behalf of:

County of Orange  
Intervenor Name

SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT

Dated: 09/19/2019

  
Signature

Gregory P. Priamos  
Print Name

County Counsel  
Title

On behalf of:

County of Riverside  
Intervenor Name



**SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT**

Dated: September 17, 2019

  
Signature

Michelle D. Blazynski  
Print Name

County Counsel  
Title

On behalf of:

Santa Bernardino County  
Intervenor Name

**SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT**

Dated:

  
Signature

Dana McRae  
Print Name

County Counsel  
Title

On behalf of:

County of Santa Cruz  
Intervenor Name

SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT

Dated:

*Jordan M. Chang*  
Signature

Sandra T.M. Chang  
Print Name

Asst General Counsel II  
Title

On behalf of:

Sar Deepa Dutta/Sar Deepa Dabhi  
Intervenor Name

SIGNATURE PAGE FOR INTERVENORS - SPRINT SETTLEMENT AGREEMENT

Dated:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

On behalf of:

\_\_\_\_\_  
Intervenor Name

**EXHIBITS AND DEFINED TERMS**

**Exhibits**

- A. Proposed Allocation
- B. Preliminary Approval Order
- C. Consent and Release by Non-Intervenor
- D. Final Approval Order
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**EXHIBIT A**  
**PROPOSED ALLOCATION**







7. The proposed pro rata settlement allocation among Sprint customers based on the Proposed Allocation submitted as Exhibit \_\_\_\_\_ to the Declaration of \_\_\_\_\_ is fair and reasonable.
8. The Court preliminarily approves a 25% allocation to Relator from the Intervenor's gross settlement allocation.
9. The Court preliminarily approves a 40% allocation to Relator from the Non-Intervenor's gross settlement allocation.
10. The Final Approval Hearing ("the Hearing") shall commence on \_\_\_\_\_ at \_\_\_\_\_ 9th Street in Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement, including but not limited to the dismissal of the Civil Action with prejudice as to Sprint pursuant to the Stipulated Judgment to be submitted upon satisfaction of the conditions set forth in the Settlement Agreement, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs' counsel, are in all respects fair, adequate, and reasonable, in the best interests of the parties involved, and serve the public purposes behind the CFCFA.
11. Plaintiffs' briefs and supporting papers in support of the proposed settlement, proposed Relator's share, and application for an award of fees and expenses to plaintiffs' counsel shall be filed with the Court 21 days prior to the Hearing. After the Hearing, the Court may enter an Order Approving Settlement in accordance with the Settlement Agreement.
12. Any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court only if a Non-Intervenor files written notice of the intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and serves copies thereof, together with proof of service, upon counsel for Plaintiffs and Sprint, on or before \_\_\_\_\_.
13. Any Non-Intervenor that does not make an objection to the proposed settlement in the manner set forth herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.
14. In the event the proposed settlement as provided in the Settlement Agreement is not approved by the Court, or for any reason the parties fail to obtain a Final Dismissal Order as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms, then the Settlement Agreement and all orders entered in connection therewith shall become null and void and of no further force and effect, and shall not be used or referred to for any purposes whatsoever. In such event, the Settlement Agreement and all negotiations and

proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto.

**Exhibit to Preliminary Approval Order: Non-Intervenor Customer Notice**

Notice of settlement with defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc., and distribution of settlement proceeds in *State of California ex rel. On The Go Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)

**Dear Sir or Madam,**

You are receiving this letter because [ENTITY] is a non-intervening real party in interest ("Non-Intervenor") in *State of California ex rel. On The Go Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County. Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint") and Plaintiffs have entered into a Settlement Agreement in the case, and [ENTITY] has been identified as a party that will receive a share of the Sprint settlement payment.

**The lawsuit.**

The lawsuit was filed by Relator On The Go Wireless, LLC on July 2, 2012, pursuant to the California False Claims Act ("CFCFA"), on behalf of real parties in interest the State of California and political subdivisions identified therein. The lawsuit, which named several defendants, including Sprint, generally alleged that Defendants failed to comply with the terms of cooperative purchasing agreements the Western States Contracting Alliance ("WSCA") awarded to Defendants to provide wireless equipment and services to California government entities. As relevant here, Plaintiffs allege the WSCA agreements, and other agreements related to them, required Sprint to provide its California government customers purchasing wireless services pursuant to those agreements with "rate plan optimization reports" and wireless services at the lowest cost available. Sprint's alleged failure to comply with these provisions resulted in overcharges to those California government customers.

**The settlement**

The parties have agreed to settle this case with respect to Sprint only. Copies of documents filed with the Court in support of the settlement, which include the Settlement Agreement, are included herewith.

To receive the full amount of the share allocated to a Non-Intervenor in the Proposed Allocation, if any, the Non-Intervenor must execute the Consent Page provided in the Addendum and return the executed Consent Page to Plaintiffs' counsel by \_\_\_\_\_. By doing so, a Non-Intervenor affirmatively consents to the terms of the Settlement Agreement, including the general release contained therein. Original signatures are not required. The Executed Consent Page may be returned to Plaintiffs' counsel by the following methods:

Mail to: Anne Hartman  
Constantine Cannon LLP  
150 California Street, Suite 1600  
San Francisco, CA 94111

Fax to: (415) 639-4002

E-mail to: [ahartman@constantinecannon.com](mailto:ahartman@constantinecannon.com)

If a Non-Intervenor does not execute the Consent Page, and therefore does not agree to be bound by the Terms of the Settlement Agreement, then the Non-Intervenor will a) receive only 90% of the amount allocated to it in the Proposed Allocation and b) release only the specific claims Plaintiffs asserted under Government Code section 12651(a) in this litigation.

In addition, Plaintiffs will apply to the Court for a Relator's share pursuant to California Government Code section 12652(g)(3) and attorney fees pursuant to California Government Code section 12652(g)(8). As set for in the Settlement Agreement and Proposed Allocation, Plaintiffs are requesting a Relator's share of 40% with respect to any amounts allocated to Non-Intervenors, and have entered into a settlement agreement with Sprint to receive attorneys' fees in the amount of \$2,000,000.

#### Hearing

The Court has set a hearing for final approval of the Settlement Agreement for \_\_\_\_\_ at \_\_\_\_\_, to be held in Department \_\_\_\_\_ of the Sacramento Superior Court, located at \_\_\_\_\_ in Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement Agreement—including but not limited to the dismissal of the Civil Action with prejudice as to Sprint, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs' counsel—are in all respects fair, adequate, and reasonable, and in the best interests of the parties involved, serve the public purposes behind the CFCA, and should be finally approved.

#### How to object

The Court has ordered that any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Pursuant to the Court's order, objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court only if, on or before \_\_\_\_\_, a Non-Intervenor files written notice of the intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and shall serve copies thereof, together with proof of service, on or before said date upon counsel for Plaintiffs and Sprint.

#### Additional information

If you have any questions about this notification and settlement payment, or the terms of the

Preliminary Approval Order

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NITDK'S 40251v.1

settlement agreement, please contact Anne Hartman at (415) 766-3532. If the recipient of this letter is not an attorney who represents [ENTITY] in civil legal proceedings, you may want to consult with such counsel.  
Letter to be signed by  
Counsel for Plaintiffs

#### Exhibit to Preliminary Approval Motion: Non-Intervenor Non-Customer Notice

Notice of settlement with defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. in *State of California ex rel. On The Go Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)

#### Dear Sir or Madam,

You are receiving this letter because [ENTITY] is a non-intervening real party in interest ("Non-Intervenor") in *State of California ex rel. OnTheGo Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County. Defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint") and Plaintiffs have entered in to a Settlement Agreement in the case.

[ENTITY] has been identified as a party that did not make purchases from Sprint under the contracts at issue in the case during the relevant time period, and therefore will not receive a share of the Sprint settlement payment. No further action is required from you at this time. However, if you would like more information about the settlement, or if you would like to object to the settlement:

#### Download Filings Regarding Settlement

Copies of documents filed with the Court in support of the settlement, which include the Settlement Agreement and Addendum, may be downloaded at: [WEBSITE ADDRESS](#) In addition, you may contact counsel identified below to obtain the documents.

#### Hearing

The Court has set a hearing for final approval of the Settlement Agreement for \_\_\_\_\_ at \_\_\_\_\_, to be held in Department \_\_\_\_\_ of the Sacramento Superior Court, located at \_\_\_\_\_ in Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement Agreement—including but not limited to the dismissal of the Civil Action with prejudice as to Sprint, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs' counsel—are in all respects fair, adequate, and reasonable, and in the best interests of the parties involved, serve the public purposes behind the CFCA, and should be finally approved.

#### How to object

Preliminary Approval Order

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The Court has ordered that any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Pursuant to the Court's order, objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court only if, on or before \_\_\_\_\_, a Non-Intervenor files written notice of the intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and shall serve copies thereof, together with proof of service, on or before said date upon counsel for Plaintiffs and Sprint.

**Additional Information**

If you have any questions about this notification, or the terms of the settlement agreement, you may contact counsel for the Relators and Intervenor:

Anne Hartman  
Constantine Cannon LLP  
150 California Street, Suite 1609  
San Francisco, CA 94111  
Telephone: (415) 766-3532  
E-mail: [ahartman@constantinecannon.com](mailto:ahartman@constantinecannon.com)

If the recipient of this letter is not an attorney who represents [ENTITY] in civil legal proceedings, you may want to consult with such counsel.

Letter to be signed by  
Counsel for Plaintiffs

**EXHIBIT C**  
**CONSENT AND RELEASE BY NON-INTERVENOR**  
**Consent and Release for Non-Intervenor**

1. The undersigned has received and reviewed a copy of the Settlement and Release Agreement executed by and between Defendant Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint"), Relator OnTheGo Wireless, LLC, and the political subdivisions that intervened in *State of California et al. v. OnTheGo Wireless, LLC v. Celco Partnership d/b/a Verizon Wireless, et al.*, Case No. 14-2012-00127517, which is pending in the Superior Court for Sacramento County ("Settlement Agreement"), the Notice of Proposed Settlement, and the Court's Preliminary Approval Order.

The undersigned hereby represents and warrants that he or she is fully authorized to provide binding consent on behalf of the Non-Intervenor identified below.

By signing below and returning this document to Plaintiffs' counsel pursuant to the terms of and by the deadline set forth in the Court's Preliminary Approval Order, the identified Non-Intervenor hereby agrees to be bound by the terms of the Settlement Agreement, including specifically the releases contained therein, and to be treated as a Party to the Settlement Agreement for all relevant purposes.

Consent and Release by Non-Intervenors

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of \_\_\_\_\_

Non-Intervenor Name \_\_\_\_\_

**EXHIBIT D**

**FINAL APPROVAL ORDER**  
**Text for Proposed Order for Final Approval**  
**of Settlement with Sprint Defendants**

The Plaintiffs' Motion for Final Approval of Settlement with Sprint Defendants ("Motion") came on for noticed hearing before the Honorable Judge Holzer Jersher, presiding, on the date and time set forth above. Appearances are reflected on the record.

Due and adequate notice having been given of the motion, and the Court having considered the moving papers, including all points and authorities and evidence submitted therewith, and any opposition or objections to the Motion, and the arguments of counsel at hearing, and all other matters properly presented to the Court in relation thereto, and good cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

1. The Court issued a Tentative Ruling on \_\_\_\_\_, which required appearances. The Tentative Ruling is attached as Exhibit A hereto and incorporated herein.
2. The Court finds that the Settlement is fair, reasonable, in the best interests of the parties involved, and in furtherance of the public purposes behind the California False Claims Act, California Government Code sections 12650 et seq. ("FCFA").
3. The Court finds that the Non-Intervenor Customers identified as Consenting Non-Intervenors on Exhibit B hereto have consented to the settlement and are deemed parties to the Settlement Agreement for all purposes.
4. The release provisions of the Amended Settlement are fair and reasonable.
5. The proposed pro rata settlement allocation among Sprint customers based on the Final Allocation set forth on Exhibit B hereto is fair and reasonable.
6. The Court approves a 25% allocation to Relator from the Intervenor's gross settlement allocation.
7. The Court approves a 40% allocation to Relator from the Non-Intervenors' gross settlement allocation.
8. Non-Intervenors that have not made an objection to the proposed settlement are deemed to have waived any such objection by appeal, collateral attack, or otherwise.

**EXHIBIT E**  
**STIPULATED JUDGMENT**

Whereas, Plaintiffs reached a settlement with defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint"), which settlement was subject to approval by this Court and the satisfaction of conditions agreed to by the Settling Parties;

Whereas, on \_\_\_\_\_, the Court entered the Final Approval Order approving the settlement between Plaintiffs and Sprint on the terms and conditions set forth therein; and,

Whereas, all conditions for submission of this stipulated judgment have now occurred;

Now, therefore, the Settling Parties stipulate and agree that pursuant to California Government Code section 12652(b)(1), all claims in the Civil Action against Sprint are hereby **DISMISSED** in their entirety **WITH PREJUDICE**, but that the court retain jurisdiction to enforce the terms of the Settlement Agreement and Stipulated Judgment.

**PROPOSED ORDER**

The court, having reviewed the above stipulation of the parties, and being familiar with the record of this case, dismisses this action as to defendants Nextel of California, Inc. d/b/a Sprint Nextel and Nextel Communications and Sprint Solutions, Inc. (collectively, "Sprint") with prejudice. However, pursuant to Code of Civil Procedure §664.6 and any other relevant statutory provisions, and the parties' above stipulation and Settlement Agreement and Stipulated Judgment, this court retains jurisdiction over this case and over the parties personally for such further orders, hearings and other proceedings as may be appropriate to enforce the terms of the parties' Settlement Agreement and Stipulated Judgment.

**EXHIBIT E**  
**ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT**, dated as of \_\_\_\_\_, 20\_\_\_\_ ("Escrow Agreement"), is by and among \_\_\_\_\_, a \_\_\_\_\_ corporation ("Depositor"), \_\_\_\_\_, a \_\_\_\_\_ corporation ("Recipient"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as escrow agent hereunder ("Escrow Agent").

**BACKGROUND**

A. Depositor and Recipient have entered into a \_\_\_\_\_ Agreement (as amended, the "Underlying Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, pursuant to which [describe the nature of transaction]. The Underlying Agreement provides that Depositor shall deposit the Escrow Funds (defined below) in a segregated escrow account to be held by Escrow Agent for the purpose of [describe reason for escrow of funds].

B. Escrow Agent has agreed to accept, hold, and disburse the funds deposited with it and the earnings thereon in accordance with the terms of this Escrow Agreement.

C. Depositor and Recipient have appointed the Representatives (as defined below) to represent them for all purposes in connection with the funds to be deposited with Escrow Agent and this Escrow Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. **Definitions.** The following terms shall have the following meanings when used herein:

"Escrow Funds" shall mean the funds deposited with Escrow Agent pursuant to Section 3 of this Agreement, together with any interest and other income thereon.

"Escrow Period" shall mean the period commencing on the date hereof and ending at the close of Escrow Agent's business day on [insert ending date] unless earlier terminated pursuant to this Escrow Agreement.

"Indemnified Party" shall have the meaning set forth in Section 11.

"Joint Written Direction" shall mean a written direction executed by the Representatives and directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking any other action pursuant to this Escrow Agreement.

"Depositor Representative" shall mean the person(s) so designated on Schedule C hereto or any other person designated in a writing signed by Depositor and delivered to Escrow Agent and the Recipient Representative in accordance with the notice provisions of this Escrow

Agreement, to act as its representative under this Escrow Agreement.

"Representatives" shall mean the Depositor Representative and the Recipient Representative.

"Recipient Representative" shall mean the person(s) so designated on Schedule C hereto or any other person designated, in a writing signed by Recipient and delivered to Escrow Agent and the Depositor Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

2. Appointment of and Acceptance by Escrow Agent. Depositor and Recipient hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3 below, agrees to hold, invest and disburse the Escrow Funds in accordance with this Escrow Agreement.

3. Deposit of Escrow Funds. Simultaneously with the execution and delivery of this Escrow Agreement, Depositor, on behalf of the Recipient, will transfer the Escrow Funds in the amount \$ \_\_\_\_\_, by wire transfer of immediately available funds, to an account designated by Escrow Agent.

4. Disbursements of Escrow Funds. Escrow Agent shall disburse Escrow Funds at any time and from time to time, upon receipt of, and in accordance with, a Joint Written Direction. Such Joint Written Direction shall contain complete payment instructions, including writing instructions or an address to which a check shall be sent. Upon the expiration of the Escrow Period and receipt by Escrow Agent from Recipient of complete payment instructions in writing, Escrow Agent shall distribute to Recipient, as promptly as practicable, any remaining Escrow Funds. Prior to any disbursement, Escrow Agent shall have received reasonable identifying information regarding the Recipient such that Escrow Agent may comply with its regulatory obligations and reasonable business practices, including without limitation a completed United States Internal Revenue Service ("IRS") Form W-9 or original IRS Form W-8, as applicable. All disbursements of funds from the Escrow Funds shall be subject to the fees and claims of Escrow Agent and the Indemnified Parties pursuant to Section 11 and Section 12 below.

5. Suspension of Performance; Disbursement into Court. If, at any time, (i) there shall exist any dispute between Depositor, Recipient or the Representatives with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, (ii) Escrow Agent is unable to determine, to Escrow Agent's satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent's proper actions with respect to its obligations hereunder, or (iii) Depositor and Recipient have not, within 10 calendar days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 8 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

- a. suspend the performance of any of its obligations (including without

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limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed.

b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

Escrow Agent shall have no liability to Depositor, Recipient or the Representatives, their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

6. [reserved]

7. Investment of Funds. Based upon Depositor's and Recipient's prior review of investment alternatives, in the absence of further specific written direction to the contrary, the Escrow Agent is directed to initially invest and reinvest the Escrow Funds in the investment indicated on Schedule B hereto. Recipient may provide written instructions changing the investment of the Escrow Funds to the Escrow Agent; provided, however, that no investment or reinvestment may be made except in the following: (a) direct obligations of the United States of America or obligations the principal of and the interest on which are unconditionally guaranteed by the United State of America; (b) U.S. dollar denominated deposit accounts and certificates of deposits issued by any bank, bank and trust company, or national banking association (including Escrow Agent and its affiliates), which such deposits are either (i) insured by the Federal Deposit Insurance Corporation or a similar governmental agency, or (ii) with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P or "P-1" by Moody's and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank); (c) repurchase agreements with any bank, trust company, or national banking association (including Escrow Agent and its affiliates); or (d) institutional money market funds, including funds managed by Escrow Agent or any of its affiliates; provided that the Escrow Agent will not be directed to invest in investments that the Escrow Agent in its sole discretion determines are not consistent with the Escrow Agent's policy or practices. Depositor and Recipient acknowledge that the Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice. *(Note: include this language if investing in any sweep vehicles: (Depositor and Recipient acknowledge that they have received from the Escrow Agent, either directly or via access to the relevant website, a current copy of the prospectus for the investment they have authorized in Schedule B, prior to providing such authorization.)*)

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If Escrow Agent has not received a written instruction from Recipient at any time that an investment decision must be made, Escrow Agent is directed to invest the Escrow Funds, or such portion thereof as to which no written investment instruction has been received, in the investment indicated on Schedule B hereto. All investments shall be made in the name of Escrow Agent. Notwithstanding anything to the contrary contained herein, Escrow Agent may, without notice to Depositor and Recipient, sell or liquidate any of the foregoing investments at any time for any disbursement of Escrow Funds permitted or required hereunder. All investment earnings shall become part of the Escrow Funds and investment losses shall be charged against the Escrow Funds. Escrow Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Escrow Funds. With respect to any Escrow Funds received by Escrow Agent after twelve o'clock, p.m., Central Standard Time, Escrow Agent shall not be required to invest such funds or to effect any investment instruction until the next day upon which banks in St. Paul, Minnesota and the New York Stock Exchange are open for business.

8. Resignation or Removal of Escrow Agent. Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving thirty (30) days prior written notice to Depositor and Recipient specifying a date when such resignation shall take effect. Similarly, Depositor and Recipient may remove and discharge Escrow Agent from the performance of its duties hereunder at any time by jointly giving thirty (30) days prior written notice to the Escrow Agent specifying a date when such removal shall take effect. Upon any such notice of resignation or removal, Depositor and Recipient jointly shall appoint a successor escrow agent hereunder prior to the effective date of such resignation or removal. If the Depositor and Recipient fail to appoint a successor escrow agent within such time, the Escrow Agent shall have the right to petition a court of competent jurisdiction to appoint a successor escrow agent, and all costs and expenses (including without limitation attorneys' fees) related to such petition shall be paid jointly and severally by Depositor and Recipient. The Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor escrow agent, after making copies of such records as the Escrow Agent deems advisable and after deduction and payment to the Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After the Escrow Agent's resignation or removal, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement.

9. Binding Effect; Successors. This Escrow Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors or assigns. If the Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Escrow Agreement) to another corporation, the successor or transferee corporation without any further act shall be the successor Escrow Agent.

10. Liability of Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent has no fiduciary or discretionary duties of any kind. The Escrow Agent shall have no liability under and

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no duty to inquire as to the provisions of any agreement other than this Escrow Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the sole cause of any loss to the Depositor or Recipient. Escrow Agent's sole responsibility shall be for the safekeeping and disbursement of the Escrow Funds in accordance with the terms of this Escrow Agreement. Escrow Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Underlying Agreement, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the advice of such counsel. Depositor and Recipient, jointly and severally, shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel. Depositor and Recipient agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably request in connection with its duties hereunder.

The Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court authorizing such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

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11. **Indemnification of Escrow Agent.** From and at all times after the date of this Escrow Agreement, Depositor and Recipient, jointly and severally, shall, to the fullest extent permitted by law, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation Depositor, Recipient and the Representatives, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance in connection with this Escrow Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. Depositor and Recipient further agree, jointly and severally, to indemnify each Indemnified Party for all costs, including without limitation reasonable attorney's fees, incurred by such Indemnified Party in connection with the enforcement of Depositor's and Recipient's indemnification obligations hereunder. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by the Depositor and Recipient jointly and severally. The obligations of Depositor and Recipient under this Section 11 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

The parties agree that neither the payment by Depositor or Recipient of any claim by Escrow Agent for indemnification hereunder nor the disbursement of any amounts to Escrow Agent from the Escrow Funds in respect of a claim by Escrow Agent for indemnification shall impair, limit, modify, or affect, as between Depositor and Recipient, the respective rights and obligations of Depositor and Recipient under the Underlying Agreement.

## 12. Compensation of Escrow Agent

a. **Fees and Expenses.** Depositor and Recipient agree, jointly and severally, to compensate Escrow Agent on demand for its services hereunder in accordance with Schedule A attached hereto. **(Note: optional language could be inserted here covering other payment arrangements, for example: "Without limiting the joint and several nature of their obligations to Escrow Agent, the Depositor and Recipient agree that, as between themselves only [each will be responsible for one-half of Escrow Agent's compensation] [Depositor will be wholly responsible for Escrow Agent's compensation]"** etc.) The obligations of Depositor and Recipient under this Section 12 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

b. **Disbursements from Escrow Funds to Pay Escrow Agent.** Escrow Agent is authorized to, and may disburse to itself from the Escrow Funds, from time to time, the amount of any compensation and reimbursement of out-of-pocket expenses due and payable hereunder (including any amount to which Escrow Agent or any Indemnified Party is entitled to seek indemnification hereunder). Escrow Agent shall notify Depositor and Recipient of any disbursement from the Escrow Funds to itself or any Indemnified Party in respect of any compensation or reimbursement hereunder and shall furnish Depositor and Recipient copies of related invoices and other statements.

c. **Security and Offset.** Recipient, Depositor and the Representatives hereby grant to Escrow Agent and the Indemnified Parties a security interest in, lien upon and right of offset against the Escrow Funds with respect to any compensation or reimbursement due any of them hereunder (including any claim for indemnification hereunder). If for any reason the Escrow Funds are insufficient to cover such compensation and reimbursement, Depositor and Recipient shall promptly pay such amounts to Escrow Agent or any Indemnified Party upon receipt of an itemized invoice.

13. **Representations and Warranties.** Depositor and Recipient each respectively make the following representations and warranties to Escrow Agent:

a. It has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder; and this Escrow Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms; and

b. each of the applicable persons designated on Schedule C attached hereto have been duly appointed to act as authorized representatives hereunder and individually have full power and authority to execute and deliver any Joint Written Direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as authorized representatives under this Escrow Agreement, all without further consent or direction from, or notice to, it or any other party, provided that any change in designation of such authorized representatives shall be provided by written notice delivered to each party to this Escrow Agreement.

14. **Identifying Information.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent requires documentation to verify its formation and existence as a legal entity. The Escrow Agent may ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties acknowledge that a portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L. 107-56 (the "Act"), and each agrees to provide any additional information requested by the Escrow Agent in connection with the Act or any other legislation or regulation to which Escrow Agent is subject, in a timely manner.

15. Consent to Jurisdiction and Venue. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Escrow Agreement, the parties hereto agree to the personal jurisdiction by and venue in the state and federal courts in the State of \_\_\_\_\_ and waive any objection to such jurisdiction or venue. The parties hereto consent to and agree to submit to the jurisdiction of any of the courts specified herein and agree to accept service of process in vest personal jurisdiction over them in any of these courts.

16. Notices. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered (i) by personal delivery, or (ii) by national overnight courier service, or (iii) by certified or registered mail, return receipt requested, or (iv) via facsimile transmission, with confirmed receipt or (v) via email by way of a PDF attachment hereto of a manually executed document. Notice shall be effective upon receipt except for notice via email, which shall be effective only when the recipient, by return email or notice delivered by other method provided for in this Section 16, acknowledges having received that email (with an automatic "read receipt" or similar notice not constituting an acknowledgment of an email receipt for purposes of this Section 16.) Such notices shall be sent to the applicable party or parties at the address specified below:

If to Depositor or Depositor Representative at:

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to Recipient or Recipient Representative at:

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to the Escrow Agent at: U.S. Bank National Association, as Escrow Agent  
ATTN: Global Corporate Trust Services

Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
and to: U.S. Bank National Association

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ATTN: \_\_\_\_\_  
Trust Finance Management  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein shall be deemed to have been given on the date received.

17. Optional Security Procedures. In the event funds transfer instructions, address changes or change in contact information are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by facsimile or otherwise, the Escrow Agent is authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule C hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If the Escrow Agent is unable to contact any of the designated representatives identified in Schedule C, the Escrow Agent is hereby authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Depositor's or Recipient's executive officers ("Executive Officers"), as the case may be, which shall include the titles of Chief Executive Officer, President and Vice President, as the Escrow Agent may select. Such Executive Officer shall deliver to the Escrow Agent a fully executed incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. Depositor and Recipient agree that the Escrow Agent may at its option record any telephone calls made pursuant to this Section. The Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Depositor or Recipient to identify (a) the beneficiary, (b) the beneficiary's bank, or (c) an intermediary bank. The Escrow Agent may apply any of the Escrow Funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. Depositor and Recipient acknowledge that these optional security procedures are commercially reasonable.

18. Amendment, Waiver and Assignment. None of the terms or conditions of this Escrow Agreement may be changed, waived, modified, discharged, terminated or varied in any manner whatsoever unless in writing duly signed by each party to this Escrow Agreement. No course of conduct shall constitute a waiver of any of the terms and conditions of this Escrow Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Escrow Agreement on one occasion shall not constitute a waiver of the other terms of this Escrow Agreement, or of such terms and conditions on any other occasion. Except as provided in Section 9 hereof, this Escrow Agreement may not be assigned by any party without the written consent of the other parties.

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19. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

20. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the internal laws of the State of \_\_\_\_\_ without giving effect to the conflict of laws principles thereof.

21. Entire Agreement. No Third Party Beneficiaries. This Escrow Agreement constitutes the entire agreement between the parties relating to the holding, investment and disbursement of the Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the Escrow Funds. Nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

22. Execution in Counterparts. Facsimiles. This Escrow Agreement and any Joint Written Direction may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction. The delivery of copies of this Escrow Agreement and any Joint Written Instruction and their respective signature pages by PDF or facsimile transmission shall constitute effective execution and delivery as to the parties and may be used in lieu of originals for all purposes.

23. Termination. This Escrow Agreement shall terminate upon the distribution of all the Escrow Funds pursuant to any applicable provision of this Escrow Agreement, and Escrow Agent shall thereafter have no further obligation or liability whatsoever with respect to this Escrow Agreement or the Escrow Funds.

24. Dealings. The Escrow Agent and any stockholder, director, officer or employee of the Escrow Agent may buy, sell, and deal in any of the securities of the Depositor or Recipient and become pecuniarily interested in any transaction in which the Depositor or Recipient may be interested, and contract and lend money to the Depositor or Recipient and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for the Depositor or Recipient or for any other entity.

25. Brokerage Confirmation Waiver. Depositor and Recipient acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant either the right to receive brokerage confirmations for certain security transactions as they occur, Depositor and Recipient specifically waive receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Depositor and Recipient periodic cash transaction statements that include detail for all investment transactions made by the Escrow Agent.

26. Tax Reporting. Escrow Agent shall have no responsibility for the tax consequences of this Agreement and Depositor and Recipient shall consult with independent

counsel concerning any and all tax matters. Depositor and Recipient shall provide Escrow Agent Form W-9 and an original Form W-8, as applicable, for each payee, together with any other documentation and information requested by Escrow Agent in connection with Escrow Agent's reporting obligations under applicable IRS regulations. If such tax documentation is not so provided, Escrow Agent shall withhold taxes as required by the IRS. Recipient and Depositor have determined that any interest or income on Escrow Funds shall be reported on an accrual basis and deemed to be for the account of [Depositor/Recipient]. Depositor and Recipient shall prepare and file all required tax filings with the IRS and any other applicable taxing authority; provided that the parties further agree that:

a. Escrow Agent IRS Reporting. Depositor shall accurately provide the Escrow Agent with all information requested by the Escrow Agent in connection with the preparation of all applicable Form 1099 and Form 1042-S documents with respect to all distributions as well as in the performance of Escrow Agent's reporting obligations under the Foreign Account Tax Compliance Act and Foreign Investment in Real Property Tax Act or other applicable law or regulation.

b. Withholding Requests and Indemnification. Depositor and Recipient jointly and severally agree to (i) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Agreement, (ii) request the Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations, and (iii) indemnify and hold the Escrow Agent harmless pursuant to Section 11 hereof from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against Escrow Agent.

c. Imputed Interest. To the extent that IRS imputed interest regulations apply, Depositor and Recipient shall so inform Escrow Agent, provide Escrow Agent with all imputed interest calculations and direct Escrow Agent to disburse imputed interest amounts as Depositor and Recipient deem appropriate. Escrow Agent shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information.

***Include if applicable:***

d. Cost Basis Reporting. Depositor and Recipient shall affirm in writing to Escrow Agent whether the securities being exchanged, redeemed, or sold pursuant to the Underlying Agreement are classified as "Covered Securities" or "Non-Covered Securities" under IRS Cost Basis Reporting regulations not later than thirty (30) days after a distribution hereunder. If such securities are classified as "Covered Securities", then Depositor and Recipient are jointly responsible for providing accurate and complete cost basis information to Escrow Agent for purposes of Form 1099-B preparation. The required information shall include date of acquisition and cost basis of the applicable security, and any other information that Escrow Agent may request to comply with IRS



1099-B reporting regulations. Depositor and Recipient shall provide written direction to Escrow Agent on the allocation of the cost basis to each shareholder's distribution.]

**U.S. BANK NATIONAL ASSOCIATION**  
as Escrow Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

27. **WAIVER OF TRIAL BY JURY.** EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR (2) IN ANY WAY IN CONNECTION WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES TO THIS AGREEMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ANY SUCH PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES TO THIS AGREEMENT, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EACH HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A CONSENT BY ALL PARTIES TO A TRIAL BY THE COURT.

28. **Publicity.** No party will (a) use any other party's proprietary indicia, trademarks, service marks, trade names, logos, symbols, or brand names, or (b) otherwise refer to or identify any other party in advertising, publicity releases, or promotional or marketing publications, or correspondence to third parties without, in each case, securing the prior written consent of such other party.

**IN WITNESS WHEREOF**, the parties hereto have caused this Escrow Agreement to be executed under seal as of the date first above written.

**[Depositor]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Recipient]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE A**

Schedule of Fees for Services as Escrow Agent

**SCHEDULE B**

**U.S. BANK NATIONAL ASSOCIATION**  
**Investment Authorization Form**

**SCHEDULE C**

Each of the following person(s) is a Depositor Representative authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Depositor's behalf (only one signature required):

_____	Specimen signature	_____	Telephonic No.
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_____	Specimen signature	_____	Telephonic No.
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_____	Specimen signature	_____	Telephonic No.
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*(Note: if only one person is identified above, please add the following language:)*  
The following person not listed above is authorized for call-back confirmations:

_____	_____	_____	Telephonic Number
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Each of the following person(s) is a Recipient Representative authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Recipient's behalf (only one signature required):

_____	Specimen signature	_____	Telephonic No.
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_____	Specimen signature	_____	Telephonic No.
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_____	Specimen signature	_____	Telephonic No.
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*(Note: if only one person is identified above, please add the following language:)*  
The following person not listed above is authorized for call-back confirmations

_____	_____	_____	Telephonic Number
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