

Stacey K. Sutton
New Jersey Bar No. 027361999
James B. Baldinger
Florida Bar No. 869899
Admitted pro hac vice
CARLTON FIELDS, P.A.
CityPlace Tower
525 Okeechobee Boulevard -- Suite 1200
West Palm Beach, FL 33401
Tel: 561-659-7070
Fax: 561-659-7368
Email: ssutton@carltonfields.com
jbbaldinger@carltonfields.com

*Attorneys for Sprint Nextel Corporation and
Sprint Communications Company, L.P.*

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

SPRINT NEXTEL CORPORATION and)
SPRINT COMMUNICATIONS COMPANY,)
L.P.,)
)
Plaintiffs,)
)
v.)
)
YECHIEL A. EBSTEIN, an individual, and)
ELIYAHU C. EBSTEIN, an individual,)
)
Defendants.)
)

Civil Action No: 3:13-CV-00573
(MAS) (TJB)

**STIPULATION FOR ENTRY OF FINAL JUDGMENT AND
PERMANENT INJUNCTION AGAINST ALL DEFENDANTS**

Plaintiffs Sprint Nextel Corporation and Sprint Communications Company, L.P. and
Defendants Yechiel A. Ebstein and Eliyahu C. Ebstein, hereby stipulate and agree to the entry of

the Final Judgment and Permanent Injunction Against All Defendants, filed with this stipulation in the form attached hereto at **Exhibit 1-A**.

CARLTON FIELDS, P.A.

By: _____

Stacey K. Sutton
New Jersey Bar No. 027361999
Email: ssutton@carltonfields.com
James B. Baldinger (*admitted pro hac vice*)
Florida Bar No. 869899
Email: jbaldinger@carltonfields.com
525 Okeechobee Boulevard, Suite 1200
West Palm Beach, Florida 33401
Tel: (561) 659-7070
Fax: (561) 659-7368

Gail Podolsky (*admitted pro hac vice*)
Georgia Bar No. 142021
Email: gpodolsky@carltonfields.com
CARLTON FIELDS, P.A.
1201 West Peachtree Street, Suite 3000
Atlanta, Georgia 30309
Tel: (404) 815-2714
Fax: (404) 815-3415

*Attorneys for Sprint Nextel Corporation and
Sprint Communications Company, L.P.*

By: *Bruce Howard Snyder*

Bruce Howard Snyder, Esq.
Lasser Hochman, LLC
75 Eisenhower Parkway
Roseland, New Jersey 07068-1694
Telephone: (973) 226-2700
Fax: (973) 226-0844

Attorneys for All Defendants

EXHIBIT 1-A

Stacey K. Sutton
New Jersey Bar No. 027361999
James B. Baldinger
Florida Bar No. 869899
Admitted pro hac vice
CARLTON FIELDS, P.A.
CityPlace Tower
525 Okeechobee Boulevard -- Suite 1200
West Palm Beach, FL 33401
Tel: 561-659-7070
Fax: 561-659-7368
Email: ssutton@carltonfields.com
 jbaldinger@carltonfields.com

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Civil Action No: 3:13-CV-00573
(MAS) (TJB)

**FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST ALL DEFENDANTS**

Plaintiffs Sprint Nextel Corporation and Sprint Communications Company, L.P. ("Plaintiffs") brought the above-captioned lawsuit against Defendants Yechiel A. Ebstein and Eliyahu C. Ebstein (collectively "Defendants"), alleging that Defendants are engaged in an

unlawful enterprise involving the unauthorized and deceptive bulk purchase and resale overseas of specially-manufactured wireless telephones designed for use on Sprint's wireless service, including the Sprint iPhone (collectively, "Sprint Phones" or "Sprint Handsets" or "Phones" or "Handsets"), the theft of Sprint's subsidy investment in the Phones, the unlawful access of Sprint's protected computer systems and wireless network, the trafficking of Sprint's protected and confidential computer passwords, and the willful infringement of Sprint's trademarks (collectively, the "Bulk Handset Trafficking Scheme" or the "Scheme").

Sprint further alleges that Defendants and their co-conspirators perpetrate the Bulk Handset Trafficking Scheme by acquiring large quantities of Sprint Phones from Sprint and/or Sprint authorized retailers and dealers, and by soliciting others to purchase Sprint Phones in large quantities for the benefit of Defendants. Defendants and their co-conspirators allegedly acquire the Sprint Phones with the knowledge and intent that the Phones will not be used on the Sprint wireless network (as required by the Sprint contracts). Instead, the Phones are allegedly trafficked and the vast majority are resold as new overseas where the Phones are not subsidized by wireless carriers (as they are in the United States) and where the Phones are not as readily available. In some cases, Defendants and their co-conspirators allegedly acquire the Sprint Phones with the knowledge and intent that the Phones will be computer-hacked. The purpose of this alleged hacking, known as "unlocking," is to disable software installed in the Phones by the manufacturers at the request and expense of Sprint, which enables the activation of the Sprint Phones exclusively on Sprint's wireless system. The alleged purpose of the software is to allow Sprint to offer the Phones at a discount to the consumer while protecting Sprint's subsidy investment in the Phone. The allegedly illegally unlocked Phones are trafficked and resold as new by Defendants and their co-conspirators, at a premium, under the Sprint trademarks.

Sprint Phones are sold subject to terms and conditions (“Terms and Conditions”) which conspicuously restrict and limit the sale and use of the Phones. These Terms and Conditions are set forth in printed inserts that are packaged with each Phone and are posted on Sprint’s website. Pursuant to the Terms and Conditions of Sprint Phones, purchasers agree, among other things: (a) to pay the monthly service charges and other related fees; (b) to pay an Early Termination Fee (“ETF”) for each line of service that is terminated before the contract term is concluded; (c) to activate the Sprint Phones on the Sprint CDMA network; (d) not to resell the Sprint Phones and related products and services; and (e) not to use the Phones for a purpose that could damage or adversely affect Sprint.

As a result of Defendants’ alleged involvement in the Bulk Handset Trafficking Scheme, Sprint has asserted claims against Defendants for breach of contract, unfair competition, tortious interference with business relationships and prospective advantage, civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, common law fraud, fraudulent misrepresentation, violations of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*, federal trademark infringement under 15 U.S.C. § 1114, federal common law trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B), contributory trademark infringement, unfair competition under N.J. Rev. Stat. § 56:4-1 and violations of the New Jersey Computer Fraud and Abuse Act under N.J. Rev. Stat. § 2A:38A-1, *et seq.* Defendants have denied all of the claims asserted by Sprint. Based on the respective positions advocated by the parties, and having reviewed the Complaint and file and being otherwise duly and fully advised in the premises, it is hereby:

ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over all the parties and all of the claims set forth in Sprint's Complaint.

2. The Court finds that Sprint has the right to use and enforce rights in the standard character Sprint® mark and stylized Sprint® trademarks (collectively, the "Sprint Marks"), as depicted below:

Sprint

Sprint uses the Sprint Marks on and in connection with its telecommunications products and services. The Sprint Marks are valid, distinctive, protectable, famous, have acquired secondary meaning, and are associated exclusively with Sprint.

3. The Court finds that the Terms and Conditions and the language in and on the packaging constitute a valid and binding contract. The Court finds that (a) failing to pay for monthly service charges; (b) failing to pay ETF fees; (c) failing to activate the Phones on the Sprint wireless network; (d) reselling and exporting the Sprint Phones and related products and services; and (e) using the Phones for a purpose that could damage or adversely affect Sprint, constitute independent breaches of contract for which Sprint is entitled to relief.

4. The Court finds that the conduct set forth in the Complaint, if proven, would constitute violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)(1)(A) and (B) (federal trademark infringement and false advertising). The Court further finds that the conduct, if proven, would also constitute common law unfair competition, tortious interference with business relationships and prospective advantage, civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, contributory trademark infringement, unfair competition under N.J. Rev. Stat. § 56:4-1 and violations of the New Jersey Computer Fraud and Abuse Act under N.J.

Rev. Stat. § 2A:38A-1, *et seq.*, conversion, common law fraud, and violates the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*

5. Sprint has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendants' alleged conduct. On review and consideration of all relevant factors, Sprint is entitled to injunctive relief on the claims as set forth in the Complaint.

6. Final judgment is hereby entered against Defendants Yechiel A. Ebstein and Eliyahu C. Ebstein, jointly and severally, and in favor of the Plaintiffs, on all of the claims set forth in Plaintiffs' Complaint.

7. Defendants and all of their past and present agents, employees, heirs, personal representatives, beneficiaries, relatives, and all other persons or entities acting or purporting to act for him or on his behalf, including, but not limited to, any corporation, partnership, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or Defendants' representatives, agents, assigns, employees, independent contractors, associates, servants, and any and all persons and entities in active concert and participation with Defendants who receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any Sprint Phones;
- b. supplying Sprint Phones to or facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in the purchase or sale of Sprint Phones or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in Sprint Phones;

- c. engaging in any of the conduct described in the Complaint as the “Bulk Handset Trafficking Scheme;”
- d. supplying Sprint Phones to or facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in any of the acts prohibited under this Permanent Injunction, including, without limitation, the buying and/or selling of Sprint Phones; and
- e. knowingly using the Sprint Marks or any other trademark, service mark, trade name and/or trade dress owned or used by Sprint now or in the future, or that is likely to cause confusion with Sprint’s Marks, without Sprint’s prior written authorization.

8. The purchase, sale or shipment of any Sprint Phones without Sprint’s prior written consent within and/or outside of the continental United States is and shall be deemed a presumptive violation of this permanent injunction.

9. Defendants waive any and all rights to challenge the validity of this Final Judgment in this Court or in any other court, and specifically waive their right of appeal from the entry of this Final Judgment.

10. The Court retains jurisdiction over this matter and the parties to this action in order to enforce any violation of the terms the parties’ settlement agreement and the terms of this Permanent Injunction by a entering a subsequent judgment awarding damages against Defendants and by a finding of contempt and an order for payment of compensatory damages to Plaintiffs in an amount of \$5,000 for each Sprint Phone that Defendants are found to have purchased, sold or unlocked in violation of this Injunction. The Court finds that these amounts

are compensatory and will serve to compensate Sprint for its losses in the event Defendants violate the terms of this Order.

DONE AND ORDERED this 12th day of November, 2014.

Wesley
UNITED STATES DISTRICT JUDGE

Copies furnished to:

All Counsel of Record