

1 M. CORY BROWN (Bar No. 115472)
 2 mcbrown@higgslaw.com
 3 STEPHEN T. PELLETIER (Bar No. 231236)
 4 pelletiers@higgslaw.com
HIGGS FLETCHER & MACK LLP
 401 West “A” Street, Suite 2600
 San Diego, CA 92101-7913
 Telephone: 619.236.1551
 Facsimile: 619.696.1410
[Additional Counsel Listed on Signature Page]
Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

12 **SPRINT SOLUTIONS INC. and**
 13 **SPRINT COMMUNICATIONS**
COMPANY L.P.,

14 **Plaintiffs,**

15 **v.**

16 **ZHIWEI LIAO individually and**
 17 **d/b/a Z-TECH LOOP, ANTHONY**
FAY, PHONE MONSTER INC.
 18 **and MAXIMIANO OLIVA,**

19 **Defendants.**

Case No.: 14-cv-00249-DMS-DHB

STIPULATED FINAL
JUDGMENT AND PERMANENT
INJUNCTION
AGAINST DEFENDANT
ANTHONY FAY

20 Plaintiffs Sprint Solutions, Inc. and Sprint Communications Company L.P.
 21 (collectively, “Sprint” or “Plaintiffs”) brought the above-captioned lawsuit against
 22 Defendant Anthony Fay (“Defendant”), alleging that Defendant is engaged in an
 23 unlawful enterprise involving the unauthorized and deceptive bulk purchase and
 24 resale overseas of specially-manufactured wireless telephones designed for use on
 25 Sprint’s wireless service, including the Sprint iPhone (collectively, “Sprint Phones”
 26 or “Sprint Handsets” or “Phones” or “Handsets”), the theft of Sprint’s subsidy

1 investment in the Phones, the unlawful access of Sprint's protected computer
2 systems and wireless network, the trafficking of Sprint's protected and confidential
3 computer passwords, and the willful infringement of Sprint's trademarks
4 (collectively, the "Bulk Handset Trafficking Scheme" or the "Scheme").

5 Defendant perpetrated the Bulk Handset Trafficking Scheme by acquiring
6 large quantities of Sprint Phones from Sprint and/or Sprint authorized retailers and
7 dealers, and by soliciting others to purchase Sprint Phones in large quantities for the
8 benefit of Defendant. Defendant acquired the Sprint Phones with the knowledge
9 and intent that the Phones will not be used on the Sprint wireless network (as
10 required by the Sprint contracts). Instead, the Phones are trafficked and the vast
11 majority are resold as new overseas where the Phones are not subsidized by wireless
12 carriers (as they are in the United States) and where the Phones are not as readily
13 available. In some cases, Defendant acquired the Sprint Phones with the knowledge
14 and intent that the Phones will be computer-hacked. The purpose of this hacking,
15 known as "unlocking," is to disable software installed in the Phones by the
16 manufacturers at the request and expense of Sprint, which enables the activation of
17 the Sprint Phones exclusively on Sprint's wireless system. The purpose of the
18 software is to allow Sprint to offer the Phones at a discount to the consumer while
19 protecting Sprint's subsidy investment in the Phone. The illegally unlocked Phones
20 are trafficked and resold as new by Defendant, at a premium, under the Sprint
21 trademarks.

22 Sprint Phones are sold subject to terms and conditions ("Terms and
23 Conditions") which conspicuously restrict and limit the sale and use of the Phones.
24 These Terms and Conditions are set forth in printed inserts that are packaged with
25 each Phone and are posted on Sprint's website. Pursuant to the Terms and
26 Conditions of Sprint Phones, purchasers agree, among other things: (a) to pay the
27 monthly service charges and other related fees; (b) to pay an Early Termination Fee
28 ("ETF") for each line of service that is terminated before the contract term is

1 concluded; (c) to activate the Sprint Phones on the Sprint CDMA network; (d) not to
2 resell the Sprint Phones and related products and services; and (e) not to use the
3 Phones for a purpose that could damage or adversely affect Sprint.

4 Sprint has asserted claims against Defendant for unfair competition, tortious
5 interference with business relationships and prospective advantage, civil conspiracy,
6 unjust enrichment, conspiracy to induce breach of contract, common law fraud,
7 fraudulent misrepresentation, violations of the federal Computer Fraud and Abuse
8 Act, 18 U.S.C. § 1030, *et seq.*, federal trademark infringement under 15 U.S.C. §
9 1114, federal common law trademark infringement and false advertising under 15
10 U.S.C. § 1125(a)(1)(A) and (B), contributory trademark infringement, conversion,
11 and unfair competition under California Business & Professions Code § 17200, *et*
12 *seq.* The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
13 1367.

14 Based on the stipulation of the parties filed February 23, 2015, and having
15 reviewed the Complaint and file, this final judgment is entered based on the
16 following stipulated findings of fact and conclusions of law:

17 1. Sprint has the right to use and enforce rights in the standard character
18 Sprint® mark and stylized Sprint® Virgin Mobile, payLo, Assurance Wireless and
19 Boost Mobile trademarks (collectively, the “Sprint Marks”), as depicted below:



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

4 2. The Terms and Conditions and the language in and on the packaging
5 constitute a valid and binding contract enforceable between Sprint and each of its
6 customers. The Court finds the Terms and Conditions set forth certain rights and
7 restrictions on the use of Sprint Phones. Among other things, the Terms and
8 Conditions: (a) require that the customer pay applicable service charges and other
9 related fees; (b) indicate that the Phone is designed to be activated on the Sprint
10 CDMA network; (c) prohibit resale of Sprint Phones and related products and
11 services; and (d) prohibit using the Phones for a purpose that could damage or
12 adversely affect Sprint., for which Sprint is entitled to relief.

13 3. The conduct set forth in the Complaint constitutes violations of the
14 Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)(1)(A) and (B) (federal trademark
15 infringement and false advertising). The conduct also constitutes unfair
16 competition, tortious interference with business relationships and prospective
17 advantage, civil conspiracy, unjust enrichment, conspiracy to induce breach of
18 contract, common law fraud, fraudulent misrepresentation, violations of the federal
19 Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*, contributory trademark
20 infringement, and conversion.

21 4. Sprint has suffered damages, including loss of goodwill and damage to
22 its reputation, as a result of Defendant's conduct. On review and consideration of
23 all relevant factors, Sprint is entitled to damages and injunctive relief on the claims
24 as set forth in the Complaint.

25 Based on the foregoing, it is **ORDERED** and **DECREED**:

26 5. Final judgment is hereby entered against Defendant, and in favor of the
27 Plaintiffs, on all of the claims set forth in Plaintiffs' Complaint in the principal
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1 amount of Five Million Dollars and Zero Cents (\$5,000,000.00 (U.S.)), which shall
2 bear interest at the legal rate, for which let execution issue forthwith.

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

- 11 a. purchasing, selling, unlocking, reflashing, altering, advertising,
12 soliciting and/or shipping, directly or indirectly, any Sprint
13 Phones;
- 14 b. supplying Sprint Phones to or facilitating or in any way assisting
15 other persons or entities who Defendant knows or should know
16 are engaged in the purchase or sale of Sprint Phones or hacking,
17 altering, erasing, tampering with, deleting or otherwise disabling
18 the software installed in Sprint Phones;
- 19 c. engaging in any of the conduct described in the Complaint as the
20 “Bulk Handset Trafficking Scheme;”
- 21 d. supplying Sprint Phones to or facilitating or in any way assisting
22 other persons or entities who Defendant knows or should know
23 are engaged in any of the acts prohibited under this Permanent
24 Injunction, including, without limitation, the buying and/or
25 selling of Sprint Phones; and
- 26 e. knowingly using the Sprint Marks or any other trademark,
27 service mark, trade name and/or trade dress owned or used by
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1 Sprint now or in the future, or that is likely to cause confusion
2 with Sprint's Marks, without Sprint's prior written authorization.

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

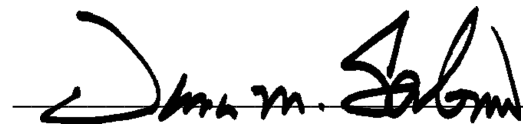
6 8. The address of Defendant is 1810 South El Camino Real, Unit 208,
7 Encinitas, California 92024.

8 9. Defendant waives any and all rights to challenge the validity of this
9 Final Judgment in this Court or in any other court, and specifically waives his right
10 of appeal from the entry of this Final Judgment.

11 10. The Court retains jurisdiction over this matter and the parties to this
12 action in order to enforce any violation of the terms of this Permanent Injunction by
13 a finding of contempt and an order for payment of compensatory damages to
14 Plaintiffs in an amount of \$5,000 for each Sprint Phone that Defendant is found to
15 have purchased, sold or unlocked in violation of this Injunction. These amounts are
16 compensatory and will serve to compensate Sprint for its losses in the event
17 Defendant violates the terms of this Order.

18 11. The Court hereby finds, pursuant to Fed. R. Civ. P. 54(b), that there is
19 no just reason for delay and orders that Judgment shall be entered against Defendant
20 as set forth herein.

21 DONE AND ORDERED this 13th day of April, 2015.

22
23 
24 UNITED STATES DISTRICT JUDGE

25 Copies furnished to:
26 All Counsel of Record

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