

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

RICK HARLOW, JON SCHOEPFLIN, MYRA)
LISA DAVIS, and JIM KOVAL)
individually and on behalf of a class of others)
similarly situated,)

Plaintiffs,)

v.)

SPRINT NEXTEL CORPORATION,)
a Kansas Corporation,)

Case No. 08-CV-22222-JWL/DJW

and)

SPRINT/UNITED MANAGEMENT)
COMPANY,)
a Kansas Corporation,)

Defendants.)

DEFENDANTS’ ANSWER TO SECOND AMENDED CLASS ACTION COMPLAINT

NOW COME Defendants Sprint/United Management Company (“SUMC”) and Sprint Nextel Corporation (“Sprint”) (collectively “Defendants”) and set forth their answer and affirmative defenses to Plaintiffs’ Second Amended Class Action Complaint:

PRELIMINARY STATEMENT

1. The Named Plaintiffs bring this action against Defendants for unpaid wages and related penalties based on contracts for commissions they had with Defendants. This action is based on Defendants’ policy and practice to deny their employees who worked for their Business Direct Channel for some or all of their commissions.

Response: Defendants admit that Plaintiffs purport to bring an action on the grounds described in Paragraph 1. Defendants, however, deny that Plaintiffs have stated any valid claim for relief. All remaining allegations in Paragraph 1 are denied.

2. The Named Plaintiffs have been employed or are currently employed by Defendants and were paid in full or in part on a commission structure based on the sale of services and products for Defendants.

Response: Defendants deny the allegations in Paragraph 2, but admit that SUMC retained employees who were eligible for and earned commissions in addition to their base compensation. All remaining allegations in Paragraph 2 are denied.

3. Upon information and belief, due to alleged problems with Defendants' computer on or after January 1, 2006, Defendants have failed to pay the Named Plaintiffs the proper commissions due to them pursuant to their contracts for commissions with Defendants.

Response: Denied.

4. Defendants knew or should have known about their failure to pay the Named Plaintiffs their commissions, but have denied and continue to deny them their proper pay. Defendants' actions were willful and in violation of the law.

Response: Denied.

5. As a result, the Named Plaintiffs bring this nationwide class action on their own behalf, and on behalf of those similarly situated. The contracts under which Defendants promised to pay these commissions contain forum selection and choice of law provisions designating this Court as the proper venue and Kansas law as the applicable law.

Response: Defendants admit that Plaintiffs purport to bring this case as a class action. Defendants, however, deny that this case is appropriate for class action treatment or that Plaintiffs have stated any valid claim for relief. Defendants admit that the compensation plans applicable to Plaintiffs and members of the putative class contain a choice of forum provision that designates a state court in Kansas or the federal court in Kansas as the proper forum for

disputes involving claims under those compensation plans. Defendants admit that the compensation plans applicable to Plaintiffs and members of the putative class state that those plans are governed by Kansas law. All remaining allegations in Paragraph 5 are denied.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over all claims in this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). This is a putative class action in which (1) there are 100 or more members in the Named Plaintiffs' proposed class, (2) at least some members of the proposed class have a different citizenship from Defendants, and (3) the claims of the Named Plaintiffs and the proposed class members exceed \$5,000,000.00 in the aggregate.

Response: Defendants admit that Plaintiffs have alleged a putative class that would exceed 100 persons, some of whom have different citizenship from Sprint, and that the claims of the putative class as alleged could exceed \$5,000,000. Defendants, however, deny that this case is appropriate for class action treatment or that Plaintiffs have stated any valid claim for relief.

7. In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the Named Plaintiffs' claims, because they derive from a common nucleus of operative fact and are part of the same case or controversy.

Response: Denied.

8. The Court is also empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

Response: Defendants admit that 28 U.S.C. §§ 2201 and 2202 govern declaratory judgments. Defendants, however, deny that Plaintiffs have stated any valid claim for relief.

9. Venue in this district is proper pursuant to 28 U.S.C. § 1391, because Defendants are Kansas corporations, and because the contract for commissions between Defendants, the Named Plaintiffs, and the proposed class members provide this district as the agreed upon venue.

Response: Defendants admit that this Court is one of the venues in which this action could have been brought but otherwise deny the allegations in Paragraph 9 in part because there was no one contract for commissions between all the parties listed.

PARTIES

10. Defendant Sprint Nextel Corporation is a Kansas corporation with its principal place of business in Reston, Virginia. Defendant Sprint Nextel Corporation employs commissioned employees, including the Named Plaintiffs, at locations across the country.

Response: Defendants admit that Sprint Nextel Corporation is a Kansas corporation with its principal place of business in Reston, Virginia. Defendants deny the remainder of the allegations in Paragraph 10.

11. Defendant Sprint/United Management Company is a Kansas corporation with its principal place of business in Overland Park, Kansas. Defendant Sprint/United Management Company employs commissioned employees, including the Named Plaintiffs, at locations across the country.

Response: Defendants admit that Sprint/United Management Company is a Kansas corporation with its principal place of business in Overland Park, Kansas, and that Sprint/United Management Company employs commissioned employees. Defendants deny the remainder of the allegations in Paragraph 11.

12. Plaintiff Harlow resides in Campbell, California. Plaintiff Harlow worked for Defendants as a Retail Sales Manager in California from approximately August 2005 to

approximately May 2006. The position he held relevant to this action was a General Business Account Executive in Defendant's Business Channel selling Defendants' products and services in California from approximately May 2006 to March 17, 2008.

Response: Defendants deny the allegations in Paragraph 12, in part because they have insufficient information to admit or deny the allegations in Paragraph 12 about Plaintiff Harlow's current residence.

13. Plaintiff Schoepflin resides in Austin, Texas. Plaintiff Schoepflin has worked for Defendants in various capacities. Those relevant to the instant action include working as an Enterprise Account Executive and Public Sector Account Executive in Defendants' Business Channel selling Defendants' productions [sic] and services in Colorado and Texas from approximately August 2005 to October 2006 and October 2006 to April 11, 2008 respectively.

Response: Defendants deny the allegations in Paragraph 13, in part because they have insufficient information to admit or deny the allegations in Paragraph 13 about Plaintiff Schoepflin's current residence.

14. Plaintiff Davis (formerly known as Myra Lisa Robinson) resides in Lorton, Virginia. The position she held relevant to this action was a Public Sector Account Executive in Defendant's Business Channel selling Defendant's products and services in California from approximately November 2003 to December 2007.

Response: Defendants deny the allegations in Paragraph 14, in part because they have insufficient information to admit or deny the allegations in Paragraph 14 about Plaintiff Davis' current residence.

15. Plaintiff Koval resides in Maumee, Ohio. The position he held relevant to this action was District Sales Manager in Defendants' Business Channel managing Defendants'

General Business and Public Sector Account Executives in Northwest Ohio and Southeast Michigan from approximately August 2005 to January 4, 2008.

Response: Defendants deny the allegations in Paragraph 15, in part because they have insufficient information to admit or deny the allegations in Paragraph 15 about Plaintiff Koval's current residence.

FACTS

16. During their employment with Defendants, the Named Plaintiffs and the proposed class members were subject to an express and implied Sales and Distribution – Business Incentive Compensation Plan, and Commission Acknowledgment Form, or similar commission plan that provided they would be paid certain commissions in addition to any other pay they might receive. Based on these Agreements they were to be paid certain commissions for products and services they sold, or those they managed sold, for the benefit of Defendants.

Response: Defendants admit that members of the putative class are composed of current and former employees who were eligible to participate in an incentive compensation plan. Defendants deny the remaining allegations contained in paragraph 16.

17. Upon information and belief, since January 1, 2006, due to problems with Defendants' computer systems, the Named Plaintiffs and the proposed class members were customarily and regularly denied the commissions Defendants promised to pay them.

Response: Denied.

18. Defendants typically denied the Named Plaintiffs and the proposed class members commissions of approximately \$500 per month on average to \$1,000 or more per month, allegedly due to problems with Defendants' computer systems. These figures were even higher

for those in managerial positions, whose commissions were based on the commissions paid to the employees they managed.

Response: Denied.

19. Defendants also deducted commissions from the Named Plaintiffs and the proposed class members based on their failure to hit Sprint Nextel quotas. However, because the computers allegedly failed to track for example all their activations and upgrades sold, Defendants' deductions for failure to meet these quotas they actually met were improper.

Response: Defendants deny the allegations set forth in paragraph 19, except to admit that when called for by the terms of the applicable commission plan and related documents, the effect of a failure to meet quota has been appropriately factored into the calculations that result in commissions payments.

20. Defendants also denied commissions through improper and erroneous charge backs thereby denying the Named Plaintiffs and the proposed class members commissions they were due.

Response: Denied.

21. Defendants occasionally reconciled some errors with respect to commissions they failed to pay certain employees. Upon information and belief, Defendants failed to reconcile the commissions owed to others, such as those who managed the employees, whose commissions should have been increased as a result of these reconciliations.

Response: Defendants deny the allegations set forth in paragraph 21. Upon having any alleged errors in payments brought to their attention, Defendants have evaluated the information and made payments where appropriate. Defendants deny the remaining allegations set forth in paragraph 21.

22. The Named Plaintiffs notified Defendants on many occasions verbally and in writing about Defendants' failure to pay them the appropriate commissions.

Response: Defendants are not aware of information to substantiate the allegations in paragraph 22 and therefore deny the allegations set forth in paragraph 22.

23. Upon information and belief, the alleged problem with Defendants' computer systems was a global issue of which Defendants were fully aware.

Response: Denied.

24. Even so, Defendants failed to take prompt action to resolve the problems and pay these individuals the commissions they were due, and have allowed the alleged computer problems and failure to pay proper commissions to persist.

Response: Denied.

CLASS ACTION ALLEGATIONS

25. The Named Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure. The Class is defined as

all persons nationwide who worked in Sales and Distribution for Defendants' Business Direct Channel since January 1, 2006, including General Business, Enterprise, and Public Sector Account Executives, those who managed these Account Executives, and other Business Direct Channel employees who were paid in full or in part based on commissions.

Response: Defendants admit that Plaintiffs purport to bring this case as a class action and have defined the class as set forth in paragraph 25. Defendants, however, deny that this case is appropriate for class action treatment or that Plaintiffs have stated any valid claim for relief.

26. The persons in the Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, upon information and belief, Defendants have employed at least one thousand individuals who satisfy the definition of the Class.

Response: Defendants admit that Plaintiffs purport to bring this case as a class action and have defined the class as set forth in paragraph 25. The putative class as defined by Plaintiffs would contain at least one thousand individuals. Defendants, however, deny that this case is appropriate for class action treatment or that Plaintiffs have stated any valid claim for relief.

27. There are questions of law and fact common to this Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:

- (a) Whether Defendants unlawfully failed to pay commissions in violation of and within the meaning of the Kansas Wage Payment Act, § 44-313 *et seq.*;
- (b) Whether Defendants failed to keep accurate records for all items and services sold by the Named Plaintiffs and the Class;
- (c) The proper measure of damages sustained by the Named Plaintiffs and the Class;
- (d) Whether Defendants' actions were willful; and
- (e) Whether Defendants should be enjoined from such violations in the future.

Response: Denied.

28. The Named Plaintiffs' claims are typical of those of the Class. The Named Plaintiffs, like other members of the Class, were subjected to Defendants' practice of failing to pay proper commissions in violation of Kansas law.

Response: Denied.

29. The Named Plaintiffs will fairly and adequately protect the interests of the Class, and have retained counsel experienced in complex wage and hour class action litigation.

Response: Denied.

30. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where

individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against a large corporate defendant.

Response: Denied.

31. Class certification of the claims is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by individual members of the Class would create a risk of duplicative litigation that might result in inconsistent or varying adjudications.

Response: Denied.

32. Class certification of the claims is also appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and injunctive relief. The Class is also entitled to injunctive relief to end Defendants' common and uniform practice of failing to compensate its employees for all work performed for the benefit of Defendants.

Response: Denied.

33. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices denied the Class the commissions to which they are entitled. The damages suffered by the individual Class members are small compared to the expense and burden of individual prosecution of this litigation.

Response: Denied.

34. The Named Plaintiffs intend to send notice to all members of Class to the extent required by Rule 23.

Response: Defendants deny the allegations set forth in Paragraph 34 as they lack the information necessary to respond.

COUNT I

35. The Named Plaintiffs reassert and incorporate by reference the allegations in the preceding paragraphs.

Response: Defendants repeat and re-allege their responses to all preceding paragraphs as though fully set forth herein.

36. At all times relevant to this action, the Named Plaintiffs and the Class were employed by Defendants within the meaning of the Kansas Wage Payment Act, K.S.A. § 44-313.

Response: Denied.

37. Defendants' course of conduct described above violated the Kansas Wage Payment Act, K. S.A. § 44-313, *et seq.*, in relevant part, by failing to pay all commissions due to the Named Plaintiffs and the Class.

Response: Denied.

38. The Kansas Wage Payment Act, K.S.A. §§ 44-314, 44-315, and 44-316 require employers such as Defendants to pay all wages due to their employees. The term "wages" is defined by the Kansas Wage Payment Act to include "commissions." K.S.A. § 44-313(c).

Response: The allegation is a conclusion of law, not of fact, and is therefore denied.

39. Defendants maintain a policy and practice of failing and refusing to pay commissions due to the Named Plaintiffs and the Class.

Response: Denied.

40. As a result of Defendants' failure to pay the proper commissions, and their decision to withhold these commissions to the Named Plaintiffs and the Class, Defendants have violated and continue to violate Kansas law.

Response: Denied.

41. Defendants' failure to pay the Named Plaintiffs and the Class all their commissions due is willful and in violation of the Kansas Wage Payment Act, K.S.A. §§ 44-314 and 44-315 (a) and (b).

Response: Denied.

42. The Named Plaintiffs, on behalf of themselves and the Class, seek the amount of their underpayments of commissions as provided by the Kansas Wage Payment Act, and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper, including the penalties provided in K.S.A. § 44-315(b) and interest provided in K.S.A. §§ 16-201 and 44-323.

Response: Defendants deny that the Named Plaintiffs, or any potential class member, are entitled to any relief, but admit that they are seeking the relief requested in this Second Amended Complaint from Defendants.

COUNT II

43. The Named Plaintiffs reassert and incorporate by reference the allegations in the preceding paragraphs.

Response: Defendants repeat and re-allege their responses to all preceding paragraphs as though fully set forth herein.

44. Defendants entered into a contract, express or implied, with the Named Plaintiffs and the Class under which these individuals would earn and be paid by Defendants commissions

for work performed for Defendants. Defendants breached this contract by their course of conduct explained above. Defendants' breach was willful and not the result of mistake or inadvertence.

Response: Denied.

45. As a direct result of Defendants' unlawful conduct, the Named Plaintiffs and the Class have suffered a loss of these commissions.

Response: Denied.

46. The Named Plaintiffs, on behalf of themselves and the Class, seek the amount of their underpayments of commissions and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

Response: Denied.

47. The Named Plaintiffs, on behalf of themselves and the Class, agree to limit their breach of contract claims to May 9, 2007 forward, since a one-year limitations period appears in their commission agreements.

Response: Defendants admit that the Named Plaintiffs, on behalf of themselves and the members of the Class, have agreed to limit the breach of contract claims to the period of May 9, 2007 forward and that the incentive compensation plans each provide that any lawsuit involving claims under the Plan must be filed within 12 months of the acts or omissions first giving rise to such claims.

**AS TO THE
PRAYER FOR RELIEF**

48. Defendants deny all of the allegations set forth in the Second Amended Complaint under letters A through G. Under the Prayer for Relief, Defendants deny that Plaintiffs are

entitled to relief and request that the Court enter judgment in favor of Defendants and award Defendants their attorney's fees, costs, and all other relief the Court deems just and appropriate.

GENERAL DENIAL

49. In further answering Plaintiffs' Second Amended Complaint, Defendants deny each and every allegation contained therein which has not been specifically admitted.

DEFENSES AND AFFIRMATIVE DEFENSES

FIRST

The Second Amended Complaint fails to state a claim upon which relief can be granted or for which the damages sought can be awarded.

SECOND

None of the persons described in the Second Amended Complaint are employees of Sprint or SUMC and those companies are improper parties to this action.

THIRD

The Second Amended Complaint is barred, in whole or in part, by the applicable statute of limitations.

FOURTH

Plaintiffs' claims are barred by the doctrine of laches.

FIFTH

Plaintiffs, by their conduct, have waived any rights they may have had or are estopped to complain of the matters alleged in the Second Amended Complaint.

SIXTH

The conduct of Defendants that is alleged to be unlawful was taken as a result of the conduct of Plaintiffs and/or the putative class members, and they are thus estopped to assert any cause of action against Defendants.

SEVENTH

Plaintiffs and/or the putative class members have released some or all of their claims, and each who has is barred from bringing this action.

EIGHTH

Plaintiffs have not been damaged in the manner or amount alleged or in any manner or amount.

NINTH

Plaintiffs have failed to state facts sufficient to support a claim for compensatory damages, liquidated damages, or any equitable relief, including declaratory relief.

TENTH

Neither Plaintiffs nor the putative class asserted herein meet the requirements of Federal Rule of Civil Procedure 23.

ELEVENTH

Defendants have the right of recoupment and/or setoff against Plaintiffs and each putative class member who received compensation they did not earn and were not otherwise entitled to receive.

TWELFTH

Plaintiffs' and the putative class members' claims are barred, in whole or in part, based on the doctrine of unjust enrichment.

THIRTEENTH

Defendants reserve the right to raise additional affirmative defenses as may be discovered during the course of these proceedings.

FOURTEENTH

The claims brought by some or all of the Plaintiffs/putative class members are barred by the doctrine of unclean hands based on their conduct with respect to appeals they filed under the applicable commission plan(s).

WHEREFORE, having fully responded to Plaintiffs' Second Amended Complaint, Defendants request that the Court dismiss Plaintiffs' Second Amended Complaint with prejudice and grant Defendants their costs incurred in connection with the defense of this litigation, including reasonable attorneys' fees, and all other relief the Court deems proper.

This 15th day of September, 2008.

/s/ Michael L. Blumenthal
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2008, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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Respectfully submitted,

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