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Sprint To Pay \$19M To End Picture Messaging Charges Suit

By **Jess Davis**

Law360, New York (June 19, 2012, 1:31 PM ET) -- Sprint Spectrum LP and Sprint Solutions Inc. have agreed to pay up to \$19 million to settle a putative class action accusing the company of improperly charging customers who had signed up for unlimited messaging plans to send picture messages, according to a proposed agreement filed Monday.

The plaintiffs sued the mobile giant in March 2010, alleging violations of the Federal Communications Act, New Jersey and California consumer fraud statutes and breach of contract, saying it promised that its Everything Messaging plan included unlimited texting and picture messaging, and then hit them with huge charges on their monthly bills for sending picture messages. Class representative Jennifer Eoff was once hit with a bill that doubled her monthly charges, according to the complaint.

"Plaintiffs and class counsel believe this proposed settlement to be an excellent result and submit that it is in the best interests of the settlement class, providing a meaningful recovery for the settlement class now," according to the agreement, sent for approval to U.S. Magistrate Judge Madeleine Cox Arleo.

Under the settlement, customers who subscribed to Sprint's Everything Messaging plan and other messaging plans between Jan. 1, 2008, and June 30 would be eligible for a \$20 cash payout or noncash benefits. Sprint agreed to provide up to \$8 million in noncash benefits and will pay up to \$19 million total for customer claims.

Those opting for a noncash payment have their choice of three months of domestic unlimited data usage on the Sprint 3G network if they don't already have a data plan, a waiver of a \$36 activation fee for a new line, a credit adjustment of \$20 for those with outstanding balances or a \$25 gift card that can be used to buy phone accessories at Sprint retail stores.

Attorneys for the plaintiffs and for Sprint did not immediately respond to requests for comment Tuesday.

The suit alleged that Sprint misinformed consumers about the true nature and cost of its messaging plans. It promised subscribers an "unlimited" messaging experience as a bait-and-switch, the complaint said. No information consumers received from Sprint indicated there would be a limitation on or additional charges for sending photos in or out of the Sprint network, according to the complaint. Yet, consumers were hit with monthly fees after they had already sent messages, it said.

The \$19 million result was reached Friday after months of negotiation, including a mediation with former U.S. District Judge William G. Bassler, according to the settlement agreement. It includes \$3.5 million in attorneys' fees.

A hearing on final settlement approval is slated for Dec. 10.

The class is represented by James E. Cecchi and Lindsey H. Taylor of Carella Byrne Cecchi Olstein Brody & Agnello PC and Julie Diane Miller and Paul M. Weiss of The Complex Litigation Group.

Sprint is represented by Joseph A. Boyle and Lauri A. Mazzuchetti of Kelley Drye & Warren LLP.

The case is Eoff v. Sprint Nextel Corp. et al., case number 2:10-cv-01190, in the U.S. District Court for the District of New Jersey.

--Editing by Lindsay Naylor.

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