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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 MORRIS REESE,

12 Plaintiff,

13 v.

14 SPRING NEXTEL CORPORATION; T-
15 MOBILE US, INC.; TRACFONE
16 WIRELESS, INC.; UNITED STATES
17 CELLULAR CORPORATION dba U.S.
18 CELLULAR; AT&T MOBILITY LLC;
and CELLCO PARTNERSHIP dba
VERIZON WIRELESS,

19 Defendants.

Case No. 2:13-cv-3811-ODW(PLAx)

**ORDER TO SHOW CAUSE WHY
DEFENDANTS SHOULD NOT BE
SEVERED UNDER 35 U.S.C. § 299**

20 Joinder is normally governed by Federal Rule of Civil Procedure 20. But in late
21 2011, Congress passed the Leahy-Smith America Invents Act, which (among other
22 things) altered the standard for joinder in patent suits. Leahy-Smith America Invents
23 Act, Pub. L. No. 112-29, sec. 19(d), § 299, 125 Stat 284, 332–33 (2011) (codified at
24 35 U.S.C. § 299). This statute sets a higher standard for joinder and prohibits joinder
25 unless the claimed infringement by each defendant arises out of the same transactions
26 relating to infringement of the patent-in-suit by the same accused product:

27 (a) **Joinder of Accused Infringers.**— With respect to any civil action
28 arising under any Act of Congress relating to patents, other than an action
or trial in which an act of infringement under section 271(e)(2) has been

1 pled, parties that are accused infringers may be joined in one action as
2 defendants or counterclaim defendants, or have their actions consolidated
3 for trial, or counterclaim defendants only if—

4 (1) any right to relief is asserted against the parties jointly,
5 severally, or in the alternative with respect to or arising out
6 of the same transaction, occurrence, or series of transactions
7 or occurrences relating to the making, using, importing into
8 the United States, offering for sale, or selling of the same
9 accused product or process; and

10 (2) questions of fact common to all defendants or
11 counterclaim defendants will arise in the action.

12 **(b) Allegations Insufficient for Joinder.**— For purposes of this
13 subsection, accused infringers may not be joined in one action as
14 defendants or counterclaim defendants, or have their actions consolidated
15 for trial, based solely on allegations that they each have infringed the
16 patent or patents in suit.

17 **(c) Waiver.**— A party that is an accused infringer may waive the
18 limitations set forth in this section with respect to that party.

19 35 U.S.C. § 299.

20 Here, Plaintiff Morris Reese has sued Sprint, T-Mobile, TracFone Wireless,
21 U.S. Cellular, AT&T Mobility, and Verizon Wireless. He alleges that each of these
22 wireless carriers has individually infringed on U.S. Patent No. 6,868,150 by offering

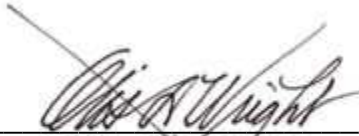
23 wireless mobile telephone services, including Caller ID and Call Waiting,
24 that let's [*sic*] you (1) hear on your cellular mobile phone an audible
25 notification such as a call waiting tone alert which indicates an incoming
26 (waiting) call while you're already engaged in a call and, if applicable,
27 let's [*sic*] you (2) see on a [*sic*] LCD display [*sic*] of your cellular mobile
28 phone a telephone number (DN) associated with the incoming (waiting)
call. Compl. ¶ 33.

 Based on this allegation, the Court cannot discern that any of these wireless
carriers has anything in common beyond having allegedly infringed the '150 Patent.
See § 299(b). The Court therefore **ORDERS** Reese to **SHOW CAUSE** no later than

1 **July 12, 2013**, why all named Defendants but the first-named Defendant (Sprint
2 Nextel) should not be severed from this action as improperly joined under § 299.
3 Each Defendant is also invited (but not required) to file a brief statement of position
4 on § 299 misjoinder on or before July 12. In the meantime, each Defendant's time to
5 answer or otherwise respond to Reese's Complaint is hereby **SUSPENDED** until
6 further notice by the Court.

7 **IT IS SO ORDERED.**

8
9 June 14, 2013



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11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**
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