

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4
5 RUDOLPH THOMAS, et al.,
6 Plaintiffs,

7 v.

8 SPRINT SOLUTIONS, INC.,
9 Defendant.

NO. C08-5119 TEH

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS SECOND AMENDED
COMPLAINT

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11 On March 30, 2010, this Court clarified “that the stay imposed on September 2, 2009,
12 encompasses all claims that would require a determination of whether the late and reconnect
13 fees charged by [Defendant] Sprint [Solutions, Inc.] are reasonable or lawful.” Mar. 30,
14 2010 Order at 13. The Court dismissed the non-stayed Consumers Legal Remedies Act
15 (“CLRA”) claim under paragraph 52 of the First Amended Complaint after finding that
16 Plaintiffs’ allegations did not rise to the required level of substantive unconscionability. The
17 Court dismissed Plaintiffs’ non-stayed Unfair Competition Law (“UCL”) claims for failure to
18 allege standing.

19 Plaintiffs were granted leave to amend their non-stayed UCL claims and filed a timely
20 second amended complaint (“SAC”) on April 26, 2010. Sprint’s motion to dismiss the SAC
21 is now before the Court. After reviewing the parties’ written arguments, the Court finds this
22 motion suitable for resolution without oral argument and VACATES the motion hearing
23 scheduled for June 14, 2010.

24 As Plaintiffs admitted in their one-page opposition, “[t]he standing allegations in the
25 SAC are substantially similar to those in the First Amended Complaint.” Opp’n at 1.
26 Plaintiffs explained that they “continue to believe that their standing allegations are
27 sufficient” but “recognize[] that this Court has previously ruled that standing allegations in
28 substantially the same form do not suffice under California’s Unfair Competition Law.

1 Plaintiffs respectively seek to preserve their right to appeal the sufficiency of these
2 allegations.” *Id.* In light of Plaintiffs’ acknowledgment that they did not amend their
3 standing allegations to comply with this Court’s March 30, 2010 order and have no intention
4 of doing so, Plaintiffs’ non-stayed UCL claims are now dismissed with prejudice.


5 Sprint also asks that the Court dismiss Plaintiffs’ non-stayed CLRA claim with
6 prejudice, but the Court has already done so. Presumably, Plaintiffs did not delete the
7 challenged paragraph from the SAC because the paragraph contains both stayed and non-
8 stayed claims: “To the extent that the paragraph alleges that the CLRA is violated by failure
9 to disclose the amounts of the late and reconnect fees, the allegations are not covered by the
10 stay. However, to the extent that the paragraph alleges that the CLRA is violated because the
11 charged fees are excessive, the allegations are included in the stay.” Mar. 30, 2010 Order
12 at 5. The Court dismissed the non-stayed CLRA claim with prejudice, but the stayed claim
13 remains in this case. Thus, it is proper for paragraph 53 to remain in the SAC.

14 In accord with all of the above, Sprint’s motion to dismiss is hereby GRANTED. All
15 non-stayed claims in the SAC are dismissed with prejudice.

16 Pursuant to the parties’ joint request in their June 7, 2010 case management
17 conference statement, all future dates in this action are hereby VACATED until the action
18 before the Federal Communications Commission (“FCC”) is resolved. For control purposes,
19 the Court will schedule a case management conference on **October 4, 2010, at 1:30 PM.**
20 The parties shall meet and confer and file a joint case management conference statement on
21 or before **September 27, 2010.** If the FCC matter has yet to be resolved by that date, the
22 parties shall so advise the Court in a stipulated request to continue the case management
23 conference for not more than 120 days.

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25 **IT IS SO ORDERED.**

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27 Dated: 06/09/10

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THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT