

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ABLE HOME HEALTH, LLC)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	
Plaintiff,)	14 C 2942
)	
v.)	
)	Judge Der-Yeghiayan
AIR1 WIRELESS, INC.,)	Magistrate Judge Cole
AIR1 WIRELESS HOLDINGS, LLC,)	
NEXTEL RETAIL STORES, LLC, doing)	
business as SPRINT, SPRINT)	
COMMUNICATIONS COMPANY, LP and)	
JOHN DOES 1-10,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

This settlement agreement (the “Settlement Agreement”), including its attached Exhibits, is entered into by and among plaintiff Able Home Health, LLC s, on behalf of it and on behalf of each of the Settlement Class Members, and defendants Air1 Wireless, Inc. and Air1 Wireless Holdings, LLC, Nextel Retail Stores, LLC doing business as Sprint, and Sprint Communications Company, LP, on behalf of themselves, and their affiliates, including all Released Parties. Capitalized terms used herein are defined in Section 3 herein or indicated in parenthesis elsewhere in the Settlement Agreement. This Settlement Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims pursuant to the terms and conditions of the Settlement Agreement, subject to the approval of the Court.

RECITALS AND DEFINITIONS

1. Parties. Defendants Air1 Wireless, Inc. and Air1 Wireless Holdings, LLC (collectively the “Air1 Wireless Defendants”), Nextel Retail Stores, LLC doing business as Sprint, and Sprint Communications Company, LP (collectively, the “Sprint Defendants”) and Plaintiff Able Home Health, LLC (“Plaintiff”) individually and as representative of the settlement class defined below (the “Settlement Class”), enter into this Settlement Agreement.

2. Nature of Litigation. On April 24, 2014, Plaintiff filed a class action complaint captioned Able Home Health, LLC v. Air1 Wireless, Inc., et al., Case No. 14 C 2942 in the United States District Court for the Northern District of Illinois (the “Litigation” or “Complaint”). Plaintiff alleges that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”), and the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”), and committed common law torts (conversion, private nuisance, trespass to chattels) by transmitting unsolicited facsimile advertisements that did not contain an opt out notice in the form required by 47 U.S.C. § 227.

3. Definitions

- a. “Class Administrator” means KCC Class Action Services, LLC.
- b. “Claim Form” means the online web form interface or written claim form substantially in the form of Exhibit 2 to this Agreement, by which a Settlement Class Member may submit a Claim to the Class Administrator.
- c. “Class Period” means the period on or after April 24, 2010 through and including April 24, 2014.
- d. “Defendants” means the Air1 Wireless Defendants and the Sprint Defendants.

- e. “Final Approval Order” means the order, substantially in the form of Exhibit 4 attached hereto, in which the Court grants final approval of this Settlement Agreement, finally certifies the Settlement Class, and authorizes the entry of a final judgment and dismissal of the Litigation with prejudice. The form of the Final Approval Order, attached as Exhibit 4 hereto, is a material term of this Settlement Agreement.
- f. “Notice” means the notices substantially in the form of Exhibit 1 and as set forth in Paragraph 15 of this Settlement Agreement.
- g. “Plaintiff” means Able Home Health, LLC and its heirs, successors and assigns.
- h. “Preliminary Approval Order” means the order, substantially in the form of Exhibit 3 attached hereto, in which the Court grants its preliminary approval to this Settlement Agreement and preliminarily certifies the Settlement Class, authorizes dissemination of Notice to the Settlement Class, and appoints the Class Administrator. The form of the Preliminary Approval Order, attached as Exhibit 3 hereto, is a material term of this Settlement Agreement.
- i. “Released Claims” means any and all actions, causes of action, claims, demands, liabilities, obligations, damage claims, restitution claims, injunction claims, declaratory relief claims, fees, costs, sanctions, proceedings and/or rights of any nature and description whatsoever, whether legal or equitable, including, without limitation, violations of any state or federal statutes and laws, rules or regulations, or principles of

common law, whether liquidated or unliquidated, known or unknown, in law, equity, arbitration, or otherwise, whether or not concealed or hidden, that in any way relate to, in whole or in part, or arise out of, any of the allegations, claims, and/or theories raised in or that could have been raised in the Litigation by Plaintiff and the Settlement Class Members. Released Claims further means any and all causes of action, suits, claims, or demands, in law or in equity, known or unknown, which Plaintiff and Settlement Class Members now have, did have, or may have in the future against the Released Parties, or any of them, under any legal theory, arising from or in any way relating to the faxes sent during the Class Period by or on behalf of the Air1 Wireless Defendants promoting the Sprint Defendants' or the Air1 Wireless Defendants' goods or services for sale and which did not contain an opt out notice as described in 47 U.S.C. § 227. This includes, but is not limited to, all claims that were asserted or could have been asserted in the Litigation, including TCPA claims, other federal claims and any state law claims.

- j. "Released Parties" means, the Air1 Wireless Defendants and the Sprint Defendants and their respective parents, subsidiaries, affiliates, predecessors and successors in interest, and all of those entities' past and current officers, directors, shareholders, partners, members, employees, agents and insurers, in such capacities as they relate to the claims that are the subject of the Litigation. The Parties expressly agree that all of these

persons and entities that are not parties to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

- k. “Request for Exclusion” means a valid Request for Exclusion from a member of the Settlement Class. To be valid, a Request for Exclusion must include the requirements set forth in Paragraph 18 of this Settlement Agreement.
- l. “Settlement Class” means a class defined as follows: All persons with fax numbers who during the Class Period (on or after April 24, 2010 through April 24, 2014) were sent faxes by or on behalf of the Air1 Wireless Defendants promoting the Sprint Defendants’ or the Air1 Wireless Defendants’ goods or services for sale and which did not contain an opt out notice as described in 47 U.S.C. § 227.
- m. “Settlement Class Counsel” means Edelman, Combs, Lattuner, & Goodwin LLC and its attorneys.
- n. “Settlement Class Member(s)” means Plaintiff and any member of the Settlement Class who is not excluded from the Settlement Class pursuant to the terms of this Settlement Agreement.

4. Denial of Liability. Defendants deny violating the TCPA and any other federal or state law, deny any liability to Plaintiff and the Settlement Class, deny all material allegations contained in the Complaint, and deny that Plaintiff and putative class are entitled to any relief. Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate this settlement of the Litigation. The Sprint Defendants deny that they are liable for any of the alleged conduct of the Air1 Wireless Defendants. Defendants are

entering into this Settlement Agreement solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all Released Claims.

5. Plaintiff's Desire to Settle. Settlement Class Counsel believe that the claims asserted in the Litigation have merit, but that the settlement, described below, is in the best interests of the Settlement Class. Settlement Class Counsel have evaluated information made available in the course of the Litigation and settlement negotiations and have taken into account the risks and uncertainties of proceeding with the Litigation. Those risks include the uncertainty of prevailing on the merits, proving substantial damages at trial, and prevailing on post-trial motions and likely appeals. Based upon their consideration of these factors, and on the substantial time and expense that will be incurred, Settlement Class Counsel believe it is in the best interests of the Settlement Class to settle the Litigation and the Released Claims on the terms described below.

6. Investigation. Settlement Class Counsel has investigated the facts and the applicable law. Based on this investigation, and upon an analysis of the substantial benefits afforded by this Settlement Agreement, Settlement Class Counsel considers it to be in the best interest of the Settlement Class to enter into this Settlement Agreement.

TERMS

1. Incorporation of Recitals and Definitions. The recitals and definitions set forth above are incorporated into this Settlement Agreement.

2. Effective Date. This Settlement Agreement shall become effective (hereinafter the "Effective Date") upon the expiration of fifteen (15) business days from the date upon which the Final Approval Order becomes final, which shall be (a) the date on which any and all appeals of the Final Approval Order are resolved in a manner that upholds the Final Approval Order, or (b) if no appeal of the Final Approval Order is filed, the expiration of fifteen

(15) business days after the last date by which an appeal of the Final Approval Order could have been commenced. If there is an appeal from the Final Approval Order, Plaintiff's and Defendants' obligations under this Settlement Agreement, including, without limitation, payments to Settlement Class Members and payment of any award of attorneys' fees, costs, and expenses shall not commence unless and until all appellate proceedings are fully and finally resolved in a manner that upholds the Final Approval Order and this Settlement Agreement becomes effective.

3. Certification of Settlement Class. Solely for the purposes of settlement, the parties stipulate to the certification of the Settlement Class. Plaintiff shall be appointed class representative and Daniel A. Edelman and Heather Kolbus of Edelman, Combs, Lattuner & Goodwin, LLC shall be appointed Settlement Class Counsel. The Settlement Class shall be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate this settlement of the Litigation. If this Settlement Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) any order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated upon notice to the Court of this Settlement Agreement's termination or disapproval; (b) the Litigation will proceed as though the Settlement Class had never been certified and any related findings or stipulations had never been made and neither this Settlement Agreement, nor any of its Exhibits, nor any other associated settlement document may be used in seeking class certification; and (c) Defendants reserve all procedural or substantive rights as of the date of execution of this Settlement Agreement.

4. The Air1 Wireless Defendants represent that, based on a review of their records, during the Class Period they successfully sent approximately 165 facsimiles promoting the Sprint Defendants' or Air1 Wireless Defendants' goods or services to approximately 155 unique facsimile numbers. The Air1 Wireless Defendants will provide to Settlement Class Counsel or the Class Administrator a list of the facsimile numbers to which those transmissions were sent, and the number of transmissions sent to each number based upon its records (the "Fax List"). Settlement Class Members were sent between 1 and 4 facsimile advertisements. Defendants will also provide addresses of the Settlement Class Members, if reasonably ascertainable.

5. Relief to Plaintiff and the Settlement Class. The following relief shall be provided to Plaintiff and the Settlement Class, subject to the Court's approval:

- a. Defendants shall collectively fund the creation of a \$52,000.00 Settlement Fund (the "Settlement Fund") which shall be distributed as set forth below;
- b. all Notice and administration expenses will be paid from the Settlement Fund. Reasonable Notice and administration expenses up to a maximum of \$3,000.00 will be advanced by the Air1 Wireless Defendants to Settlement Class Counsel or the Class Administrator within ten (10) business days after entry of the Preliminary Approval Order, and Defendants shall be given a credit on the payment of the Settlement Fund in an amount equal to the amount advanced by the Air1 Wireless Defendants;

- c. three (3) business days prior to the Final Approval Hearing, Defendants shall collectively fund the remainder of the Settlement Fund in the amount of \$49,000.00, which shall consist of a \$47,000.00 contribution from the Air1 Wireless Defendants and a \$2,000.00 contribution from the Sprint Defendants. Under no circumstances shall the Sprint Defendants be liable for any contribution to the Settlement Fund above \$2,000.00. Under no circumstances shall the Air1 Wireless Defendants be liable for any contribution to the Settlement Fund above \$50,000.00.
- d. Defendants shall within 3 business days prior to the Final Approval Hearing, transfer to their respective counsel to be held in their respective firms' client trust accounts for the benefit of the Settlement Class, the Settlement Fund of \$52,000.00 less any amounts advanced for notice and administrative expenses. On the Effective Date, Defendants' counsel shall issue a check to Settlement Class Counsel.
- e. within fourteen (14) days following the Effective Date, \$3,000.00 shall be paid from the Settlement Fund to Plaintiff as an incentive award in recognition of its services as Class Representative;
- f. Settlement Class Counsel shall request 1/3 of the Net Settlement Fund (Settlement Fund less Notice and Administrative Expenses) for attorney's fees and costs; and
- g. each Settlement Class Member who submits a valid claim form will receive a check for its pro rata share of the Settlement Fund, after the amounts set forth in subsections (b), (e), (f) and any award of costs are

paid. Each facsimile transmission received by a Settlement Class Member is the equivalent of one settlement share and a Settlement Class Member may have one or multiple settlement shares depending on the number of faxes the member received. The value of a settlement share shall be calculated by subtracting from the Settlement Fund the amounts paid to Plaintiff pursuant to subsection (e) of this paragraph, to Settlement Class Counsel pursuant to subsection (f), and for Notice and administration expenses pursuant to subsection (b) and then dividing the remaining balance in the Settlement Fund by the number of settlement shares on the valid claims submitted. In no event, however, may the value of a settlement share be greater than \$500 per facsimile transmission. Any amounts in the Settlement Fund in excess of \$500 per facsimile transmission shall be considered Undistributed Settlement Funds pursuant to Paragraph 10 of this Settlement Agreement. Each Settlement Class Member's individual pro rata share shall be determined by adding that member's settlement shares together.

6. Any award of attorney's fees and costs and any incentive award to Plaintiff will be distributed within fourteen (14) days following the Effective Date. Within ninety (90) days following the Effective Date, Settlement Class Counsel or the Class Administrator shall distribute the Settlement Fund in accordance with Paragraphs 5, 9, and 10 of this Settlement Agreement, unless this deadline is extended pursuant to Paragraph 16 of this Settlement Agreement. In the event that (i) the Settlement Agreement is terminated pursuant to its terms; (ii) Defendants withdraw from the Settlement Agreement; (iii) the Settlement

Agreement does not become effective; or (iv) the Final Approval Order is reversed, vacated, or modified in any material respect which is not mutually acceptable to the Parties, then Plaintiff's Counsel or the Class Administrator shall return \$52,000.00, less any reasonable costs not exceeding \$3,000.00, that were incurred by Settlement Class Counsel to issue Notice to the Class Members of the Settlement Agreement, to counsel of record for Defendants, within three business days of that event.

7. After entry of the Preliminary Approval Order, Settlement Class Members shall have at least sixty (60) days after the date on which Notice of the proposed settlement is sent to the Settlement Class to submit a claim, request exclusion from the Settlement Class or object to the Settlement Agreement.

8. Costs associated with Notice, claims administration and distribution of settlement checks shall be paid from the Settlement Fund.

9. Checks issued to Settlement Class Members for payment of claims under this Settlement Agreement will be void after sixty (60) days from the date of issuance. Any Settlement Class Member who does not negotiate the settlement check issued to them within sixty (60) days of the date of issuance agrees that they rescind and withdraw their claim for monetary compensation under this Settlement Agreement, but remain a member of the Settlement Class and are bound by the terms of the Settlement Agreement.

10. Undistributed Settlement Funds. Within thirty (30) days after the last void date of all settlement checks issued to Settlement Class Members, the Settlement Class Administrator will report to the Parties if there are any uncashed checks or unclaimed or undistributed amounts remaining in the Settlement Fund. Any such unclaimed or undistributed amounts remaining in the Settlement Fund after all payments required under this Settlement

Agreement have been made shall be distributed to a *cy pres* recipient, selected by the Parties and approved by the Court.

11. Release. If the Settlement is approved by the Court, Settlement Class Members who have not filed a valid and timely Request for Exclusion shall be forever barred from asserting the Released Claims against the Released Parties.

12. This Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted or prosecuted with respect to the Released Claims. Without admitting that California law or the laws of any other state apply to this Settlement Agreement or that the release provided by Plaintiff and the Settlement Class is a general release, the Parties agree that upon the Effective Date, the Settlement Class shall be deemed to have waived the provisions and benefits of California Civil Code §1542 (or any like or similar statute or common law doctrine), which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or settlement with the debtor. Further, Plaintiff and the Settlement Class Members expressly waive any and all provisions and rights or benefits which may be conferred upon them by any law, statute, ordinance or regulation which is similar, comparable or equivalent to California Civil Code §1542.

13. If this Settlement Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

14. Attorneys' Fees, Notice Costs and Related Matters. Settlement Class Counsel or the Class Administrator will administer the Settlement Fund for the benefit of the Settlement Class and will pay the reasonable costs of Notice and settlement administration out of the Settlement Fund. Settlement Class Counsel must seek approval from the Court to withdraw from the Settlement Fund any amount greater than \$3,000.00 for costs related to Notice and administration. Settlement Class Counsel will not request any fees or costs from Defendants or the Settlement Class other than as set forth in this Settlement Agreement. Defendants agree not to oppose an award of fees to Settlement Class Counsel of no more than one third of the Net Settlement Fund. Defendants agree not to oppose payment from the Settlement Fund of reasonable expenses incurred in sending Notice to the Settlement Class and in administering the Settlement Fund pursuant to the terms of this Settlement Agreement.

15. Notice. Within five (5) days after entry of the Preliminary Approval Order, the Air1 Wireless Defendants' counsel shall provide to Settlement Class Counsel and/or the Class Administrator the Fax List in MS Word or Excel format. Within thirty-five (35) days after entry of the Preliminary Approval Order, the Class Administrator shall cause actual Notice in the form of Exhibit 1 and a Claim Form in the form of Exhibit 2, to be sent to the facsimile numbers identified on the Fax List. Settlement Class Members shall have at least sixty (60) days after this first date on which actual Notice is sent to the facsimile numbers identified on the Fax List to submit a Claim Form, request exclusion from the Settlement Agreement, or object to the Settlement Agreement. The Class Administrator shall make at least two attempts to transmit the Notice by facsimile to those numbers where the initial transmission fails.

Within twenty-one (21) days after the date that the Notice was first sent by facsimile, the Class Administrator may send the Notice and Claim Form either by facsimile and/or U.S. Mail

(if addresses are ascertainable) to each Settlement Class Member identified on the Fax List who did not submit a Claim Form or otherwise respond to the Notice by that date. In the event Notice is sent by facsimile, the Class Administrator shall make at least two attempts to transmit the Notice by facsimile to those numbers where the initial transmission fails. In the event Notice is sent by U.S. Mail to addresses provided by the Air1 Wireless Defendants, the addresses shall be run through a NCOA database prior to being mailed. The postage rate selected for the mailing of the Notice shall provide for notification of forwarding addresses. If the Notices are returned by the Postal Service as undeliverable, Settlement Class Counsel or the Class Administrator may undertake further reasonable efforts to locate that person or entity to re-send the Notice to that Settlement Class Member. If the Notice is returned by the Postal Service with a forwarding address or other error that can be ascertained and corrected, then Settlement Class Counsel or the Class Administrator shall re-send the Notice by first class mail to that new address within five (5) days.

Settlement Class Counsel will also post the Notice in the form of Exhibit 1, excluding the Claim Form, and this Settlement Agreement (excluding exhibits), on their firm's website. Settlement Class Counsel or the Class Administrator shall provide a copy of the Notice and Claim Form to any Settlement Class Member who contacts either of them and requests a copy of the Notice or Claim Form.

The Class Administrator may create a website which allows for electronic submission of Claim Forms. Any website created by the Class Administrator may also post the Notice, Claim Form, Preliminary Approval Order, and Settlement Agreement (excluding exhibits).

Settlement Class Counsel and/or the Class Administrator shall retain all documents and records generated during the administration of the settlement, including records of Notice given

to Settlement Class Members, confirmations of transmittals of such notices by facsimile, unconfirmed facsimile transmissions, records of undelivered mail, claim forms, and payment to Settlement Class Members, for a period of one year following the Effective Date. Settlement Class Counsel or the Class Administrator shall provide Defendants' counsel with copies of any such documents to inspect, upon reasonable request by counsel for Defendants. The Fax List and all other documents and records generated during the administration of the settlement shall be used for purposes consistent with Notice and administration of this Settlement Agreement and for no other purpose.

16. Claim Validation. The Class Administrator shall match the fax number provided by the Settlement Class Member on a returned Claim Form to a fax number on the Fax List. If the fax number does not match, then Settlement Class Counsel or the Class Administrator shall follow-up with the Settlement Class Member and inquire if they employed other fax numbers during the Class Period (to ascertain if any different fax number is a number on the Fax List), in an effort to determine whether the claim is a valid claim.

If the fax number or fax numbers provided on a Claim Form do not match the list, and the follow-up with the Settlement Class Member has not resolved the issue, Settlement Class Counsel or the Class Administrator shall disallow the claim. If a claim is deemed disallowed by the Class Administrator, the Class Administrator must communicate that disallowance of the claim to Settlement Class Counsel and allow Settlement Class Counsel an opportunity to investigate the basis for disallowing the claim. Settlement Class Counsel shall advise Defendants' counsel of all claim disallowances. In the event the Parties disagree as to the validity of any Claim Form or whether to disallow a claim, then Settlement Class Counsel will present the disputed claim to the Court for resolution.

Settlement Class Members submitting a valid Claim Form pursuant to the fax and/or mail Notice shall be paid a pro rata share of the Settlement Fund in accordance with the terms of Paragraph 5.g. of the Terms Section of this Settlement Agreement. Settlement Class Members may submit Claim Forms for more than one fax number and more than one settlement share.

If a Settlement Class Member is entitled to receive more than \$599.99 as its total pro rata share, then such Settlement Class Member will be required to submit a W-9 form. The W-9 forms will be issued to Settlement Class Members as required after entry of the Final Approval Order and before any settlement checks are issued. Settlement Class Members will have thirty (30) days to respond to a request to complete a W-9 form. Submission of a W-9 form is a condition precedent to receiving a settlement check in excess of \$599.99. If W-9 forms need to be collected, certain dates set forth in Paragraphs 6, 9, and 10 are reset and calculated as follows: within thirty (30) days following the expiration of time for class members to complete a W-9 form, Settlement Class Counsel or the Class Administrator shall distribute the Settlement Fund to the Settlement Class Members who have submitted valid claims in accordance with Paragraph 16; settlement checks to the Settlement Class Members will be void sixty (60) days from date of issuance; and within thirty (30) days following the void date on the Settlement Class Members' checks, any uncashed checks or unclaimed or undistributed funds, the disposition of which will be determined by the Court, will be distributed to a *cy pres* recipient pursuant as set forth in Paragraph 10 of this Settlement Agreement. A Settlement Class Member who is entitled to receive more than \$599.99 and fails to submit a completed and valid W-9 form with the Claim Form, shall be deemed to have waived their claim to recover more than \$599.99 and the maximum amount such Settlement Class Member may recover is \$599.99. Any amounts remaining in the Settlement Fund as a result of those who did not submit a W-9 form, will be

added back into the Settlement Fund and reallocated to the Settlement Class Members pro rata up to a maximum of \$500 per fax transmission.

17. Right to Object. Any Settlement Class Member may object to this Settlement Agreement. The deadline to object shall be set by the Court in the Preliminary Approval Order and the Parties shall propose that it be at least sixty (60) days after the entry of the Preliminary Approval Order. Any Settlement Class Member may object to the Settlement Agreement by filing their objection with the Court and mailing a copy of the objection to Plaintiff's counsel and Defendants' counsel. Any objection must include: (a) the name, address, and facsimile phone number of the person(s) or entity objecting to the Settlement Agreement; (b) a statement of the objection to the Settlement Agreement; (c) an explanation of the legal and factual basis for the objection; and (d) documentation, if any, to support the objection. Objecting Settlement Class Members may also appear and be heard at the hearing held by the Court to consider final approval of this Settlement Agreement, personally or through counsel, at their own expense.

18. Right of Exclusion. All Settlement Class Members who properly file a timely written Request for Exclusion from the Settlement Class shall be excluded from the Settlement Class and shall have no rights as Settlement Class Members pursuant to this Settlement Agreement. A Request for Exclusion must be in writing and state the name, address, and facsimile phone number (to which a fax was sent) of the person(s) or entity seeking exclusion. Each Request for Exclusion must also contain a signed statement providing that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Litigation." The request must be mailed or faxed to Settlement Class Counsel or the Class Administrator at the address or fax number provided in the Notice and postmarked or received

by Settlement Class Counsel or the Class Administrator on or before the deadline for Requests for Exclusion set by the Court. Settlement Class Counsel shall provide copies of all Requests for Exclusion to counsel for the Defendants. A Request for Exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Notice, or that is not postmarked or received by Settlement Class Counsel or the Class Administrator within the time specified, shall be invalid and the person(s) serving such a request shall remain a Settlement Class Member and shall be bound by the terms of this Settlement Agreement, if approved. Settlement Class Members shall have at least sixty (60) days from the date of entry of the Preliminary Approval Order to submit Requests for Exclusion.

19. Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Settlement Class Counsel shall file a Motion for Preliminary Approval of this Settlement Agreement and shall present such motion to the Court requesting the entry of a Preliminary Approval Order substantially in the form of Exhibit 3 or in such other form as is mutually acceptable to the Parties. The Preliminary Approval Order shall include provisions: (a) preliminarily certifying the Settlement Class for settlement purposes only; (b) preliminarily approving the Settlement Agreement and finding this Settlement Agreement sufficiently fair, reasonable and adequate to allow Notice to be disseminated to the Settlement Class; (c) approving the form, content, and manner of the Notice; and (d) setting a schedule for proceedings with respect to final approval of this Settlement Agreement.

20. Final Approval. Settlement Class Counsel shall file a memorandum in support of final approval of this Settlement Agreement, which shall include Settlement Class Counsel's request for an award of attorney's fees and costs, prior to the date the Court sets for the final approval hearing. The Parties shall request that the Court enter a Final Approval Order

substantially in the form of Exhibit 4, or in another form which is mutually acceptable to the Parties. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”) within ten (10) days after the Motion for Preliminary Approval is filed, Defendants’ counsel shall provide notice of the proposed settlement to the Attorney General of the United States and the attorneys general of every State in which Settlement Class Members reside, including the information required by 28 U.S.C. § 1715(b). The Final Approval Order shall not be entered until the expiration of at least ninety (90) days from the latest date on which such notice is provided. Entry of a Final Approval Order substantially in the form of Exhibit 4 or in another form which is mutually acceptable to the Parties is a condition precedent to this Settlement Agreement becoming effective. In the event a Final Approval Order substantially in the form of Exhibit 4 or in another form which is mutually acceptable to the Parties is not entered then this Settlement Agreement shall be null and void and is rescinded.

21. The fact that the Court may require non-substantive changes to documents attached as Exhibits 1 through 4 shall not invalidate this Settlement Agreement.

22. Release of Attorneys’ Lien. In consideration of this Settlement Agreement, Settlement Class Counsel hereby waives, discharges and releases the Released Parties of and from any and all claims for attorneys’ fees, by lien or otherwise, for legal services rendered by Settlement Class Counsel in connection with the Litigation.

23. Delivery of Settlement Fund. Defendants or persons acting on their behalf shall within three (3) business days prior to the date of the Final Approval Hearing and pursuant to the terms set forth in Paragraph 5(c) of this Settlement Agreement, transfer to their respective counsel, to be held in their firms’ client trust account for the benefit of the Settlement class, the Settlement Fund of \$52,000.00 (less any amounts advanced for notice and administrative

expenses). Defendants' counsel shall notify Settlement Class Counsel in writing on or before the date of the Final Approval Hearing that the Settlement Fund (less any costs advanced) has been deposited in the Client Trust Accounts of Defendants' Counsel. On the Effective Date, Defendants' Counsel shall issue a check or wire the Settlement Fund to the Client Trust Account of Settlement Class Counsel and Settlement Class Counsel agrees to hold such funds in trust for the benefit of the Settlement class and shall not disburse any funds from the Settlement Fund unless in accordance with this Agreement or as ordered by the Court. Settlement Class Counsel is to provide Defendants' Counsel with wire instructions upon request for said transfer upon entry of the Final Approval Order.

24. Applicable Law. This Settlement Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Illinois.

25. Miscellaneous Provisions. The parties and their attorneys agree to cooperate fully with one another in seeking approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the settlement provided for herein. Whether or not this Settlement Agreement and the settlement contemplated hereunder are consummated, this Settlement Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of Defendants of any liability or wrongdoing whatsoever.

26. Benefit of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Released Parties and Settlement Class Members, and each of their respective successors and personal representatives, predecessors, affiliates, heirs, executors and assigns. It is expressly understood by the Parties

that all Released Parties who are not parties to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

27. Authority. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations.

28. Right to Set Aside Settlement Agreement. Defendants shall have the right, but not the obligation, to terminate or withdraw from this Settlement Agreement, if more than 40 Settlement Class Members submit non-duplicative, timely and valid requests for exclusion from the Settlement Class or if there is an objection to the Settlement by either a federal or state government agency or official. Defendants must timely exercise their right to rescind the Settlement Agreement by filing a Notice of Termination with the Clerk of the Court within 7 days prior to the entry of a Final Approval Order by the Court.

29. Entire Agreement. Any and all prior understandings and agreements between the Parties with respect to the subject matter of this Settlement Agreement are merged into and with this Settlement Agreement, which fully and completely expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Settlement Agreement may be amended, modified or changed only by a written instrument or instruments executed by duly authorized officers or other representatives of the Parties expressly amending, modifying or changing this Settlement Agreement and may not be amended, modified or changed orally.

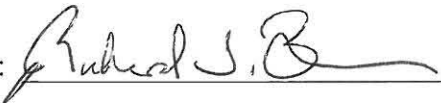
30. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by facsimile or e-mail shall be deemed legal and binding for all purposes.

31. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Settlement Agreement, nor to control or affect meanings, constructions or the effect of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF:

Able Home Health, LLC

By: 

Its: ADMINISTRATOR

DEFENDANTS:

Air1 Wireless, Inc.

By: _____

Its: _____

Air1 Wireless Holdings, LLC

By: _____

Its: _____

Nextel Retail Stores, LLC

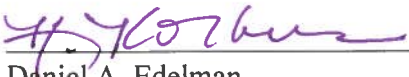
By: _____

Its: _____

Sprint Communications Company, LP

By: _____

Its: _____



Daniel A. Edelman
James O. Latturner
Heather Kolbus
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
Counsel for Plaintiff and the Class

Chris D. Rouskey
Jeffrey C. Baldacci
ROUSKEY AND BALDACCI
151 Springfield Avenue
Joliet, IL 60435
(815) 741-2118
Counsel for Defendants Air1 Wireless, Inc.,
and Air1 Wireless Holdings, LLC

Tammy L. Adkins
MCGUIRE WOODS LLP
77 W. Wacker Drive, Suite 4100
Chicago, IL 60601
(312) 849-8100
Counsel for Defendants
Nextel Retail Stores, LLC, and

31. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Settlement Agreement, nor to control or affect meanings, constructions or the effect of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF:

Able Home Health, LLC

By: _____

Its: _____

DEFENDANTS:

Air1 Wireless, Inc.

By: 

Its: CEO

Air1 Wireless Holdings, LLC

By: 

Its: MANAGING PARTNER

Nextel Retail Stores, LLC

By: _____

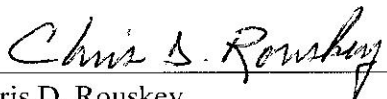
Its: _____

Sprint Communications Company, LP

By: _____


Its: _____

Daniel A. Edelman
James O. Lattuner
Heather Kolbus
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
Counsel for Plaintiff and the Class


Chris D. Rouskey
Jeffrey C. Baldacci
ROUSKEY AND BALDACCI
151 Springfield Avenue
Joliet, IL 60435
(815) 741-2118
Counsel for Defendants Air1 Wireless, Inc.,
and Air1 Wireless Holdings, LLC


Tammy L. Adkins
MCGUIRE WOODS LLP
77 W. Wacker Drive, Suite 4100
Chicago, IL 60601
(312) 849-8100
Counsel for Defendants
Nextel Retail Stores, LLC, and

Nextel Retail Stores, LLC

By: 

Its: REGIONAL MANAGER

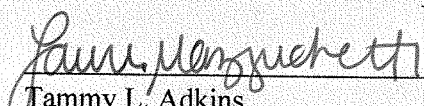
Sprint Communications Company, LP

By: 

Its: REGIONAL MANAGER

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James O. Lattuner
Heather Kolbus
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
Counsel for Plaintiff and the Class

Chris D. Rouskey
Jeffrey C. Baldacci
ROUSKEY AND BALDACCI
151 Springfield Avenue
Joliet, IL 60435
(815) 741-2118
Counsel for Defendants Air1 Wireless, Inc.,
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MCGUIRE WOODS LLP
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(312) 849-8100
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Nextel Retail Stores, LLC, and