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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM HOPWOOD, et al., individually and
on behalf of a class of similarly situated
individuals,

Plaintiff,

v.

NUANCE COMMUNICATIONS, INC., a
Delaware corporation, and INFINITY
CONTACT, INC., an Iowa corporation,

Defendants.

Case No. 4:13-cv-02132-YGR

**~~[PROPOSED]~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AGREEMENT,
CERTIFYING SETTLEMENT CLASS
FOR SETTLEMENT PURPOSES ONLY,
AND APPROVING NOTICE PLAN**

AS MODIFIED BY THE COURT

Judge: Hon. Yvonne Gonzalez Rogers

1 WHEREAS, a class action is pending before the Court entitled *Hopwood, et al. v. Nuance*
2 *Communications, Inc. and Infinity Contact, Inc.*, Case No. 4:13-cv-02132 (the “Action”); and

3 WHEREAS, Plaintiff William Hopwood (“Plaintiff”), Defendant Nuance Communications,
4 Inc. (“Nuance”), and Defendant Infinity Contact, Inc. (“Infinity”) (Nuance and Infinity are together
5 “Defendants” and collectively with Plaintiff the “Parties”) have determined to settle all claims
6 asserted against Defendants in the Second Amended Complaint in the Action with prejudice on the
7 terms and conditions set forth in the Stipulation and Agreement of Settlement (Dkt. No. 101-1 (the
8 “Agreement”)) and fully, finally, and forever resolve, discharge, and settle the Released Claims
9 against the Released Parties upon the terms and conditions set forth therein, subject to the approval
10 of this Court (the “Settlement”);

11 WHEREAS, Plaintiff made an application pursuant to Rule 23(e) of the Federal Rules of
12 Civil Procedure for an order preliminarily approving the Settlement of the Action, in accordance
13 with the Agreement, certifying the Settlement Class for purposes of settlement only, and allowing
14 notice to Settlement Class Members as more fully described herein;

15 WHEREAS, Plaintiff Teresa Martinez voluntarily dismissed all claims she had asserted in
16 the Action and Plaintiff Hopwood has filed a Second Amended Complaint through which he named
17 himself as the sole Plaintiff on behalf of a class of only individuals who received calls on their
18 cellular telephones and amended the remaining allegations to relate only to calls made to cellular
19 telephones;

20 This matter coming before the Court upon the agreement of the Parties, good cause being
21 shown, IT IS HEREBY ORDERED, DECREED, and ADJUDGED as follows:

22 1. Terms and phrases in this Order shall have the same meaning as ascribed to them in
23 the Agreement unless otherwise defined herein.

24 2. The Parties have moved the Court for an order approving the settlement of the
25 Action in accordance with the Agreement, which, together with the documents attached hereto, sets
26 forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice
27 against Defendants, and the Court having read and considered the Agreement and having heard the
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1 Parties, hereby preliminarily approves the Agreement in its entirety subject to the Final Approval
2 Hearing referred to in Paragraph 17 of this Order.

3 3. This Court finds that it has jurisdiction over the subject matter of this Action and
4 over all Parties to the Action, including the Settlement Class.

5 4. The Court finds that, subject to the Final Approval Hearing, the Agreement is fair,
6 reasonable, adequate, and in the best interests of the Settlement Class as to their claims against
7 Defendants. The Court further finds that the Agreement substantially fulfills the purposes and
8 objectives of the class action, and provides beneficial relief to the Settlement Class. The Court also
9 finds that the Agreement (a) is the result of arm's length negotiations involving experienced counsel
10 with the assistance of the Honorable James Larson (ret.) and the Honorable Jacqueline Scott Corley;
11 (b) is sufficient to warrant notice of the Settlement and the Final Approval Hearing to the
12 Settlement Class; (c) meets all applicable requirements of Federal Rule of Civil Procedure 23 for
13 settlement purposes only, including that the Settlement Class is sufficiently numerous, that there are
14 questions of law and fact common to members of the Settlement Class that predominate, that the
15 claims of Mr. Hopwood are typical of the claims of the Settlement Class, that Mr. Hopwood and his
16 counsel adequately represent the interests of the Settlement Class, and a settlement class action is a
17 superior method of adjudicating this Action; (d) meets all other applicable requirements of law,
18 including the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (e) is not a finding or
19 admission of liability by Defendants.

20 5. For purposes of settlement only, the Court certifies the following class as defined in
21 the Agreement:

22 All individuals who received a call on a United States wireless telephone number from
23 Infinity for the purpose of offering one or more Nuance products between May 8, 2009 and
the date of this order.

24 Excluded from the Settlement Class are Defendants, their officers and directors during the
25 Settlement Class Period, the members of their immediate families, and their respective
26 representatives, heirs, successors, and assigns. Also excluded from the Settlement Class are those
27 persons who otherwise satisfy the above requirements for membership in the Settlement Class, but
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1 who timely and validly request exclusion from the Settlement Class pursuant to the notice
2 documents attached hereto.

3 6. For purposes of settlement only: (a) Jay Edelson, Rafey S. Balabanian, and
4 Benjamin H. Richman of Edelson PC are appointed Class Counsel for the Settlement Class; and (b)
5 Plaintiff William Hopwood is named Class Representative. For purposes of settlement, the Court
6 finds that these attorneys are competent and capable of exercising the responsibilities of Class
7 Counsel and that Plaintiff Hopwood will adequately protect the interests of the Settlement Class.

8 7. Should the Agreement not receive the Court's final approval, should final approval
9 be reversed on appeal, or should the Agreement otherwise fail to become effective, the Court's
10 grant of class certification shall be vacated, and the Class Representative and the Settlement Class
11 would once again bear the burden of establishing the propriety of class certification. In such case,
12 neither the certification of the Settlement Class for settlement purposes, nor any other act relating to
13 the negotiation or execution of the Agreement shall be considered as a factor in connection with any
14 class certification issue(s).

15 8. Pursuant to the Agreement, The Garden City Group is hereby appointed as
16 Settlement Administrator and shall be required to perform all the duties of the Settlement
17 Administrator as set forth in the Agreement and this Order.

18 9. The Court approves, as to form, method, and content, the Notice, Summary Notice,
19 Long Claim Form and Short Claim Form to be provided to the Settlement Class as set forth
20 substantially in the form attached to the Agreement and more specifically as attached hereto as
21 Attachments 1-4. The Court finds that such notice complies with the requirements of Fed. R. Civ. P.
22 23 and Due Process, and constitutes the best notice practicable under the circumstances. The Court
23 further finds that the notice is reasonably calculated to, under all circumstances, apprise Settlement
24 Class Members of the pendency of this Action, the certification of the Settlement Class for purposes
25 of the Settlement, the terms of the Agreement, and the right of members to object to the Settlement
26 or to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the
27 notice in ways that are not material, or in ways that are appropriate to update those documents for
28 purposes of accuracy or formatting.

1 10. Pursuant to paragraph 4 of the Agreement, the notice shall be provided as follows:
2 The Settlement Administrator shall within fourteen (14) days following the entry of this Order post
3 notice of the Settlement on the settlement website at www.SoftwareCallSettlement.com. Within
4 twenty-eight (28) days following the entry of this Order, the Settlement Administrator shall provide
5 direct notice to Settlement Class Members as set forth in the Agreement. This direct notice shall be
6 supplemented by online media to the extent necessary as set forth in the Agreement. If they have
7 not done so already, Defendants will comply with the requirements of 28 U.S.C. § 1715 by serving
8 notice of the proposed Settlement upon the appropriate government officials within ten (10) days
9 after the Agreement was filed with the Court.

10 11. Settlement Class Members who wish to receive a payment under the Agreement
11 must complete and submit a valid Long Claim Form or Short Claim Form. All claim forms must be
12 postmarked or received by the Settlement Administrator no later than forty (40) days after the
13 Notice Date.

14 12. Settlement Class Members who wish to exclude themselves from the Settlement
15 Class may submit a request for exclusion by sending a written request to the Settlement
16 Administrator postmarked on or before **August 3, 2015**, which will be specified in the Notice and
17 Summary Notice. A request for exclusion must be signed by the Settlement Class Member, and
18 must include the Settlement Class Member's name, address, and the cellular telephone number that
19 allegedly received a call by Infinity on behalf of Nuance during the Settlement Class Period, and
20 must clearly state that the person wishes to be excluded from the Action and the Agreement. A
21 request for exclusion that does not include all of this information, or that is sent to an address other
22 than that designated in the notice, or that is not postmarked within the time specified, shall be
23 invalid.

24 13. Any Settlement Class Member who submits a valid and timely request for exclusion
25 (i) shall not be bound by the terms of the Agreement or by the Final Judgment and Order of
26 Dismissal with Prejudice ("Final Judgment"); (ii) shall be deemed to have waived any rights or
27 benefits under the Agreement; and (iii) may not file an objection to the Settlement. However, any
28 Settlement Class Member who fails to submit a valid and timely request for exclusion shall be

1 bound by all terms of the Agreement, the Court's Order granting class certification for settlement
2 purposes, and the Final Judgment, regardless of whether he or she has requested exclusion from the
3 Settlement Class.

4 14. Any Settlement Class Member who has not timely filed a request for exclusion may
5 object to the fairness, reasonableness, or adequacy of the Agreement, to the Final Judgment being
6 entered as to Defendants in accordance with the terms of the Agreement, to the attorneys' fees and
7 expense reimbursement sought by Class Counsel, or to the award sought by the Class
8 Representative as set forth in the Notice and Agreement. At least **fourteen (14) days prior to**
9 **August 3, 2015**, papers supporting the Fee Award shall be filed with the Court and posted to the
10 settlement website. Settlement Class Members may object on their own, or may do so through
11 separate counsel at their own expense.

12 15. To object, a Settlement Class Member must sign and submit a written objection no
13 later than **August 3, 2015**. To be valid, the objection must include: (1) the objector's name and
14 address; (2) the cellular phone number that allegedly received any call promoting a Nuance product
15 during the Settlement Class Period; (3) all grounds for the objection, including if applicable all
16 citations to legal authority and evidence supporting the objection; (4) the name and contact
17 information of any and all attorneys representing, advising, or in any way assisting the objector in
18 connection with the preparation or submission of the objection or who may profit from the pursuit
19 of the objection; and (5) a statement indicating whether the objector intends to appear at the Final
20 Approval Hearing (either personally or through counsel who files an appearance with the Court in
21 accordance with the Local Rules of this District).

22 16. All objections and any papers submitted in support of said objection, shall be
23 considered by the Court at the Final Approval Hearing only if, on or before **August 3, 2015**, the
24 person making an objection submits copies of such papers to the Court either by mailing them to the
25 Class Action Clerk, United States District Court for the Northern District of California, Ronald V.
26 Dellums Federal Building, 1301 Clay Street, Oakland, California, 94612, or files them in person at
27 any location of the United States District Court for the Northern District of California, except that
28 any objection made by a Settlement Class Member represented by counsel must be filed through the

1 Court's CM/ECF system. Settlement Class Members who fail to file and serve timely written
2 objections in the manner specified above shall be deemed to have waived any objections and shall
3 be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement at the
4 Final Approval Hearing, or from seeking review of this Agreement by appeal or other means and
5 shall be deemed to have waived his, her or its objections and be forever barred from making any
6 such objections in the Action or any other action or proceeding. By filing an objection, objectors
7 and their counsel submit to the jurisdiction of the Court for all purposes, including but not limited to
8 subpoenas and discovery.

9 17. The Fairness Hearing shall be held before this Court on **September 8, 2015** at
10 **2 p.m.** in Courtroom 1 on the 4th Floor of the Ronald V. Dellums Federal Building, 1301 Clay
11 Street, Oakland, California to consider: (a) whether the proposed Settlement of the Action on the
12 terms and conditions provided for in the Agreement is fair, reasonable and adequate and should be
13 given final approval by the Court; (b) whether the Final Judgment should be entered; (c) whether to
14 award payment of attorneys' fees and expenses to Class Counsel; and (d) whether to award payment
15 of an incentive award to the Class Representative.

16 18. Papers in support of final approval of the Agreement shall be filed with the Court on
17 or before **August 25, 2015**. The parties shall file a joint supplement of no more than five pages by
18 **September 4, 2015** if the relevant circumstances change after the August 25 filing in light of the
19 contemplated 30-day extensions for submission of cell phone bills in connection with the Long
20 Claim Forms.

21 19. In order to protect its jurisdiction to consider the fairness of this Agreement and to
22 enter a Final Judgment and Order of Dismissal with Prejudice having binding effect on all
23 Settlement Class Members, the Court hereby enjoins all Settlement Class Members, and anyone
24 who acts or purports to act on their behalf, from pursuing all other proceedings in any state or
25 federal court that seeks to address any Released Party's or Settlement Class Member's rights or
26 claims relating to, or arising out of, any of the Released Claims.

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1 20. Settlement Class Members who do not properly exclude themselves from this
2 settlement shall be bound by all determinations and judgments in the Action concerning the Action
3 and/or Agreement, whether favorable or unfavorable.

4 21. In the event that the Agreement is terminated pursuant to the provisions of the
5 Agreement, then (i) the Agreement shall be null and void, and shall have no further force and effect
6 with respect to any Party in this Action, and shall not be used in this Action or in any other
7 proceeding for any purpose; (ii) all negotiations, proceedings, and statements made in connection
8 therewith shall be without prejudice to any person or Party hereto, shall not be deemed or construed
9 to be an admission by any Party of any act, matter, or proposition, and shall not be used in any
10 manner or for any purpose in any subsequent proceeding in this Action or in any other action in any
11 court or other proceeding, provided, however, that the termination of the Agreement shall not shield
12 from subsequent discovery any factual information provided in connection with the negotiation of
13 this Agreement that would ordinarily be discoverable but for the attempted Settlement; and (iii)
14 other than as expressly preserved by the Agreement in the event of its termination, the Agreement
15 shall have no further force and effect with respect to any Party and shall not be used in the Action or
16 any other proceeding for any purpose.

17 22. The Court reserves the right to adjourn the date of the Final Approval Hearing
18 without further notice to the members of the Settlement Class. The Court may approve the
19 Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without
20 further notice to the Settlement Class. The Parties may, without further approval from the Court,
21 agree to and adopt such amendments, modifications, and expansions of the Agreement within one
22 hundred eighty (180) days of final approval so long as they are consistent in all material respects
23 with this Order and do not affect the rights of the Settlement Class.

24 This Order terminates Docket Number 101.

25 IT IS SO ORDERED.

26 Dated: May 12, 2015

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28 _____
 THE HONORABLE YVONNE GONZALEZ ROGERS
 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you received a call on your cell phone promoting a Nuance software product between May 8, 2009 and [date], a class action settlement may affect your rights.

A Federal Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against Nuance Communications, Inc. (“Nuance”) and Infinity Contact, Inc. (“Infinity,” and together, “Defendants”). The class action lawsuit is about whether Infinity, on behalf of Nuance, made unsolicited calls with an autodialer to consumers’ cell phones and to cell phone numbers on the National Do-Not-Call List.
- You are included if you received a call on your United States cellular phone from Infinity for the purpose of offering one or more Nuance products, from May 8, 2009 through [date of preliminary approval]. Please note that while the calls were technically placed by Infinity on behalf of Nuance, the calls were identified as coming from Nuance with no mention of Infinity.
- If the Court approves the Settlement, you may be eligible to receive either a flat payment of up to \$170 or up to \$65 per call if you provide your cell phone bills. These payments may be reduced, depending on the number of valid claims submitted. As part of the Settlement, Defendants also have agreed to take steps related to preventing telemarketing calls to cell phones, or to cell phones on the National Do-Not-Call list, without the appropriate consent of the recipients, as set forth in more detail below.
- Please read this notice carefully. Your legal rights are affected whether you act or don’t act by the deadlines described in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A SHORT OR LONG CLAIM FORM	The only way to receive a payment.
EXCLUDE YOURSELF	You will receive no payment, but you will retain any rights you currently have to sue the Defendants about the claims in this case.
OBJECT	Write to the Court explaining why you don’t like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the Settlement.
DO NOTHING	You won’t get a share of the Settlement benefits and will give up your rights to sue the Defendants about the claims in this case.

These rights and options—**and the deadlines by which to exercise them**—are explained in this Notice.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided only after any issues with the Settlement are resolved. Please be patient.

BASIC INFORMATION

1. Why was this Notice issued?

A Court authorized this Notice to let you know about a proposed Settlement with the Defendants. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California is overseeing this class action. The case is known as *Hopwood v. Nuance Communications, Inc. and Infinity Contact, Inc.*, Case No. 4:13-cv-02132-YGR. The person who sued is called the Plaintiff. The companies he sued, Nuance and Infinity, are called the Defendants.

2. What is a class action lawsuit?

In a class action, one or more people called “Class Representatives” sue on behalf of a group of people who have similar claims. In this case, these people are together called a “Settlement Class” or, individually, “Settlement Class Members.” In a class action, the court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class. After the parties reached an agreement to settle this case, the Court recognized it as a case that should be treated as a class action for settlement purposes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The lawsuit alleges that Infinity placed telemarketing calls on behalf of Nuance to consumers’ cell phones for the purpose of promoting Nuance products. During the calls, Infinity representatives stated that the calls were coming from Nuance, with no mention of Infinity. The lawsuit alleges that Nuance and Infinity violated the federal Telephone Consumer Protection Act because some consumers, including consumers who had placed their cell phone numbers on the Do-Not-Call list, did not agree to receive these calls. Nuance and Infinity deny the allegations and are entering into the Settlement to avoid burdensome and costly litigation. The Settlement is not an admission of, and does not establish any, wrongdoing.

More information about the complaints in the lawsuit and the Defendants’ answers can be found in the “Court Documents” section of the Settlement website at www.SoftwareCallSettlement.com.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or the Defendants should win this case. Instead, both sides agreed to a settlement. By settling, both sides avoid the uncertainties and expenses associated with ongoing litigation, and it is possible for Settlement Class Members to receive compensation now rather than, if at all, years from now. The Class Representative and his attorneys (“Class Counsel”) believe that the Settlement is in the best interests of the Settlement Class Members.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Court decided that this Settlement includes a Class comprised of: all individuals who received a call on a United States wireless telephone number from Infinity for the purpose of offering one or more Nuance products between May 8, 2009 and [date of preliminary approval]. Everyone who fits this description is a member of the Settlement Class. Approximately 400,000 individuals meet this description.

If you received a postcard or email about this class action, your cell phone number may be one of the numbers that was called during the Settlement Class Period. If you received one of these calls, one or more of the toll-free numbers listed here [insert hyperlink] will appear as the “sender” in the billing detail section of your cell phone bill. Click here [insert hyperlink] for instructions on how to obtain a copy of your cell phone billing records.

6. What were the allegedly unconsented calls about?

The calls covered by this Settlement were allegedly made to cellular telephones by Infinity in an attempt to sell Nuance software, such as Dragon® Dictate, Dragon® NaturallySpeaking, PaperPort®, and OmniPage®. The caller, however, would have identified the calls as coming from Nuance, with no mention of Infinity.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

As part of the Settlement, Defendants and their insurers have agreed to create a \$9,245,000 Settlement Fund. The Settlement Fund will be used to pay all valid claims, costs of administering the Settlement, attorneys’ fees, and incentive payment to the Class Representative.

The Settlement provides two ways to request a payment.

First, Settlement Class Members who submit a valid Short Claim Form saying they received an unauthorized call on their cell phone will be eligible to receive a set payment of up to \$170. Further details are below.

Second, Settlement Class Members who submit proof that they received multiple unauthorized calls have the option to file a Long Claim Form, along with copies of their cell phone bills showing the

number of calls they received. Those Settlement Class Members who submit a valid Long Claim Form will be eligible to receive up to \$65 per unauthorized call. Further details are below.

Depending on the number of valid claims submitted, the amounts paid may be reduced on a proportional basis.

Defendants have also agreed to take steps related to preventing telemarketing calls to cell phones without the appropriate consent of the recipients, including bi-annual audits to their telemarketing procedures for compliance with the Telephone Consumer Protection Act. These practices shall remain in place for a period of two (2) years.

HOW TO GET BENEFITS

8. How do I make a claim?

The Settlement creates a claims process with two Claim Forms: a Short Claim Form and a Long Claim Form. You can submit one Claim Form or the other, *but not both*. You can get either Claim Form on this website or by calling [[Settlement Administrator number]]. The Claim Forms may be submitted online or by U.S. Mail sent to [[address]]. If you file a valid Short Claim Form, you will receive up to \$170 and you do not need to submit additional documents. If you file a valid Long Claim Form you will receive up to \$65 per unconsented call, but you will have to provide your cell phone bills for each of the calls you received.

Short Claim Form

The Short Claim Form requires you to provide your name, address, the cellular telephone number on which you received the call(s), and your personal claim number (if you received an email or postcard notice). You must verify that, without your consent, sometime during the Settlement Class Period you received a call to your cell phone from Infinity regarding a Nuance product, or while your cell phone number was on the National Do-Not-Call list and without your consent. If approved, you will receive a set flat payment of up to \$170.

Long Claim Form

In addition to providing the information required for submitting a Short Claim Form, the Long Claim Form requires you to disclose the number of times you claim Defendants called your cell phone without your consent, or the number of times you claim Defendants called your cell phone without your consent while your number was listed on the National Do-Not-Call list, *provide a copy of your wireless cell phone bill(s)* showing receipt of these calls, and state that this information is true. Click [here](#) to find out how to obtain a copy of your cell phone records from your wireless carrier. Click [here](#) to see a list of the toll-free numbers used by Infinity to make the calls at issue, which will appear in the call detail of your cell phone bill(s). If your claim is approved, you will receive up to \$65 per call that matches your cell phone bill.

Both Claim Forms require you to affirm that you did not consent to receive these calls. You also must truthfully provide all of the information requested by the Claim Form. If you consented to receive the call(s) you got from Infinity on your cell phone, you may not be eligible to make a claim and your claim may be rejected. Counsel for Plaintiff or Defendants may also challenge the

acceptance or rejection of claims, including challenges to statements you make in a claim form or to your eligibility to make a claim. More information is available in the Settlement Agreement.

All Claim Forms must be received and properly completed by [claims deadline].

9. When will I get my payment?

The hearing to consider the final fairness of the Settlement is scheduled for [insert Final Approval Hearing date]. If the Court approves the Settlement, and after any appeals process is completed, eligible Settlement Class Members whose claims were approved will be sent a check in the mail. Please be patient. All checks will expire and become void 90 days after they are issued if uncashed.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

Yes, the Court has appointed lawyers Jay Edelson, Rafey S. Balabanian, and Benjamin H. Richman of Edelson PC as the attorneys to represent you and other Settlement Class Members. These attorneys are called “Class Counsel.” In addition, the Court appointed Plaintiff William Hopwood to serve as the Class Representative. He is a Settlement Class Member like you.

Class Counsel can be reached by calling 1-866-354-3015.

11. Should I get my own lawyer?

You don’t need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to retain that lawyer. For example, you can ask your lawyer to appear in Court for you if you want someone other than Class Counsel to represent you.

12. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys’ fees and expenses of up to \$2,250,000 and will also request an award of \$1,500 for the Class Representative. The Court will determine the proper amount of any attorneys’ fees and expenses to award Class Counsel and the proper amount of any award to the Class Representative. The Court may award less than the amounts requested by Class Counsel and the Class Representative, and any money not awarded from these requests will stay in the Settlement Fund to pay Settlement Class Members.

YOUR RIGHTS AND OPTIONS

13. What happens if I do nothing?

If you do nothing, you will receive no payment under the Settlement, you will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court. Also, unless you exclude yourself, you won’t be able to start a lawsuit or be part of any other lawsuit against the Defendants for the claims resolved by this Settlement.

14. What happens if I ask to be excluded?

If you exclude yourself from the Settlement, you can't claim any money or receive any benefits as a result of the Settlement. You will keep your right to start your own lawsuit against Defendants for the same legal claims made in this lawsuit. You will not be legally bound by the Court's judgments related to the Settlement Class and Defendants in this class action.

15. How do I ask to be excluded?

You can ask to be excluded from the Settlement. To do so, you must send a letter clearly stating that you want to be excluded from the Settlement in *Hopwood v. Nuance Communications, Inc. and Infinity Contact, Inc.*, Case No. 4:13-cv-02132-YGR. Your letter must also include your name, address, the cell phone number on which you contend you received the call(s), and your signature. You must mail your exclusion request no later than **[objection / exclusion deadline]** to:

Hopwood v. Nuance Settlement Administrator
PO Box 0000
City, ST 00000-0000

You can't exclude yourself via phone, fax, or email.

16. If I don't exclude myself, can I sue the Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendants for the claims resolved by this Settlement.

17. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Short Claim Form or Long Claim Form to ask for a payment.

18. How do I object to the Settlement?

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. You can also object solely to the proposed amount of attorneys' fees and expenses. You can't, however, ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The Court will consider your views. No later than **[objection / exclusion deadline]**, your objection to the Settlement must be filed in person at any location of the United States District Court for the Northern District of California or postmarked to the Court at the following address:

Class Action Clerk
United State District Court for the Northern District of California
Ronald V. Dellums Federal Building
1301 Clay Street, Suite 400 S
Oakland, CA 94612

The objection must be in writing and include the case name *Hopwood v. Nuance Communications, Inc. and Infinity Contact, Inc.*, Case No. 4:13-cv-02132-YGR. Your letter must be personally signed

and must (1) identify all of the reasons for your objections (including if applicable citations and supporting evidence) and attach any materials you are relying on to make your objections; (2) include your name, address, the cell phone number on which you claim you received a call promoting a Nuance product, and your signature; and (3) include the name and contact information of any and all lawyers representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection. If, in addition to submitting a written objection to the Settlement, you wish to appear and be heard at the Hearing on the fairness of the Settlement, you or your attorney must say so in your written objection. If you have an attorney, your objection and any supporting papers must be filed electronically through the Court's CM/ECF system, by [insert Objection/Exclusion deadline].

Class Counsel will file with the Court and post on the Settlement website its request for attorneys' fees and incentive award on [date 2 weeks before objection deadline].

19. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class (i.e., you don't exclude yourself from the Settlement). Even if you object, you may still submit a claim form. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you may not submit a claim form and have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court hold a hearing on the fairness of the Settlement?

A public hearing has been set for [date] at [time], before the Honorable Yvonne Gonzalez Rogers at the United States Courthouse, Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, CA 94612 in Courtroom 1, 4th Floor. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representative.

Note: The date and time of the fairness hearing are subject to change by Court Order, but any changes will be posted at the Settlement website, www.SoftwareCallSettlement.com, or through the Court's Public Access to Court Electronic Records (PACER) system, available at <https://ecf.cand.uscourts.gov>, or the Court's calendar available at <http://www.cand.uscourts.gov/ygr>.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also choose to have another lawyer attend on your behalf if you retain one, but you don't have to do so. You don't need a lawyer to make an objection or attend the hearing.

22. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement by asking to speak in your objection by following the instructions above in section 18.

GETTING MORE INFORMATION

23. Where can I get additional information?

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www.SoftwareCallSettlement.com, by contacting Class Counsel at 1-866-354-3015, by accessing the Court docket in this case through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, CA 94612 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

LEGAL NOTICE

If you received a call on your cell phone promoting a Nuance software product between May 8, 2009 and [date], a class action settlement may affect your rights.

A Federal Court authorized this notice.

You are not being sued.

This is not a solicitation from a lawyer.

If the Court approves the Settlement, you may be eligible to receive either a flat payment of up to \$170 or up to \$65 per call if you provide the required information by [claims deadline].

For complete information and details, visit www.SoftwareCallSettlement.com
or call [admin phone].

Your Personal Claim Number is _____.

A settlement has been reached in a class action lawsuit against Nuance Communications, Inc. and Infinity Contact, Inc. The lawsuit alleges that Infinity made unsolicited calls on behalf of Nuance to cell phones, including numbers on the National Do-Not-Call List, using automatic dialing equipment to promote Nuance's software products. While the calls were technically placed by Infinity on behalf of Nuance, the calls were identified as coming from Nuance, with no mention of Infinity. Nuance and Infinity deny the allegations, and the settlement is not an admission of wrongdoing or an indication that any law has been broken. The lawsuit is called *Hopwood v. Nuance Communications, Inc. and Infinity Contact, Inc.*, Case No. 4:13-cv-02132-YGR, and is in the U.S. District Court for the Northern District of California.

Why am I being contacted? Our records show you may be a "Settlement Class Member" in the settlement. Settlement Class Members are "individuals who received a call on a United States wireless telephone number from Infinity for the purpose of offering one or more Nuance products between May 8, 2009 and [date of preliminary approval]." The calls identified Nuance as the caller, and the telephone numbers the calls were made from are available at www.SoftwareCallSettlement.com.

What can I get out of the settlement? If the Court approves the settlement, Defendants and their insurers will create a \$9,245,000 settlement fund, from which eligible Settlement Class Members may receive a single payment of up to \$170 or a payment of up to \$65 per unsolicited call received, depending on the number of claims submitted. Defendants have also agreed to take certain steps in the future regarding their telemarketing practices.

How do I get my payment? You must complete the appropriate Claim Form, available at www.SoftwareCallSettlement.com. You can also call [settlement admin phone number] for a paper copy of the Claim Forms. You may only submit **one** Claim Form. Use the Short Claim Form to request up to a \$170 flat payment. Use the Long Claim Form if you received several calls and want to request up to \$65 per unsolicited call. If you use the Long Claim Form, you'll need to provide a cell phone bill that shows the calls you received. ***All Claim Forms must be received and properly completed by [claims deadline].***

What are my options? You have three options. You can do nothing or submit a Claim Form or exclude yourself from the settlement. If you do nothing or submit a Claim Form, your rights will be affected. You won't be able to sue Defendants in a future lawsuit about the claims addressed in the settlement. If you exclude yourself, you won't get a payment—but you'll keep your right to sue Defendants in a separate lawsuit on the issues the settlement concerns. You must contact the settlement administrator by mail to exclude yourself. If you do not exclude yourself, you can object to the settlement if you disagree with any of its terms. ***All Requests for Exclusion and Objections must be postmarked or filed in person by [exclusion/objection deadline].***

Do I have a lawyer? Yes. The Court has appointed lawyers from Edelson PC as "Class Counsel." They represent you and other Settlement Class Members. There's no charge to you for their services. You can hire your own lawyer, but you'll need to retain the lawyer yourself. William Hopwood is a Settlement Class Member, and the Court has appointed him to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] at the Ronald V. Dellums Federal Building, U.S. Courthouse for the Northern District of California, 1301 Clay St., Oakland, CA 94621. The Court will hear any objections, determine if the settlement is fair, and consider Class Counsel's request for fees and expenses up to \$2.25 million and an incentive award of \$1500 to William Hopwood, the class representative.

Visit www.SoftwareCallSettlement.com for complete information.

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C. Number of Calls and Dates Received – National Do-Not-Call Registry

Use this table to identify calls made to your cell phone number without your consent if that number was listed on the National Do-Not-Call registry at the time the call was received, if you received at least two such calls in a 12-month period.

I received the following number of calls on the following dates regarding an offer for a Nuance product. These calls were made without my consent to my cell phone number, which was listed on the National Do-Not-Call registry at the time each call was received.

Date	Originating Phone Number	Number of Calls	Date	Originating Phone Number	Number of Calls	Date	Originating Phone Number	Number of Calls

D. Settlement Class Member Verification

By submitting this Claim Form and checking the boxes below, I declare that I am a member of the Settlement Class and that the following statements are true (either box 1 or 2 must be checked, either box 3(a) or 3(b) must be checked, and boxes 4 and 5 must be checked for a claim to be valid):

- (1) I have provided a copy of my cell phone records, and I hereby declare it is a true and correct copy of such records. I have included the accurate dates and number of calls I received from Infinity on behalf of Nuance in the space(s) above.
- OR-**
- (2) I have been unable to obtain my cellular phone bill(s) prior to the deadline to submit this claim because (you must explain and provide a date within 30 days of the claims deadline by which you can obtain your cellular phone bills):

- (3)(a) Prior to receiving any of the calls listed above in Section B, I did not provide Nuance with express consent to call my cell phone.
- OR-**
- (3)(b) Prior to receiving any of the calls listed above in Section C, I did not provide Nuance with consent to call my cell phone and my cell phone number was listed on the National Do-Not-Call list at the time each call was received.

- (4) I received all of the above-listed calls from (or placed on behalf of) Nuance on my cell phone.
- (5) Under penalty of perjury, all information provided in this Long Claim Form is true and correct to the best of my knowledge and belief.

Signature: _____

Date: _____

Print Name: _____

Your claim will be submitted to the Settlement Administrator for review. If your Claim Form is incomplete, untimely, or contains false information, it may be rejected by the Settlement Administrator. If accepted, you will be mailed a check at the street address you provided above in the amount of up to \$65 per call that has been validated. This process takes time; please be patient.

CLAIM FORMS MUST BE SUBMITTED ONLINE OR POSTMARKED NO LATER THAN [Claims Deadline] TO BE ELIGIBLE FOR PAYMENT. Note: The Settlement Administrator cannot authorize an extension of more than 30 days after the claims deadline. FILE ONLINE AT: www.SoftwareCallSettlement.com OR MAIL THIS CLAIM FORM TO: Claims Administrator, [Address]. If you have questions, you may call Class Counsel at [toll-free number].

SHORT CLAIM FORM

Return this Claim Form to: Settlement Administrator, [address]. Questions, visit www.SoftwareCallSettlement.com or call [toll free number].

Instructions: A proposed class action settlement has been reached in a lawsuit over allegedly unauthorized calls made to cell phones by Defendant Infinity Contact, Inc. (“Infinity”) on behalf of Defendant Nuance Communications, Inc. (“Nuance”) (Infinity and Nuance together are “Defendants”) from May 8, 2009 to [date]. The Settlement Class includes “[a]ll individuals who received a call on a United States wireless telephone from Infinity for the purpose of offering one or more Nuance products between May 8, 2009 and [date].” Please note that while the calls were technically placed by Infinity, the calls were identified as coming from Nuance, with no mention of Infinity.

If you are a Settlement Class Member, you can use this Short Claim Form to request a payment by check. This Short Claim Form offers a single, one-time check payment of up to \$170, regardless of the number of calls you may have received from Infinity on behalf of Nuance, either on your cell phone without your consent or on your cell phone while that number was on the National Do-Not-Call list and without your consent. If you choose to submit your cell phone bills and provide additional information to validate the calls you received from Infinity on behalf of Nuance, you may use the Long Claim Form that offers you up to \$65 for each eligible call. If your claim is approved, the amount you will receive may be reduced depending on the number of valid claims submitted. You can only submit a Short *or* Long Claim Form, *but not both*. Visit www.SoftwareCallSettlement.com for more information.

YOUR CONTACT INFORMATION

Name: _____
(First) (Middle Initial) (Last)

Address: _____
(Street)

(City) (State) (Zip Code)

Cell Phone Number: () _____ - _____
(This must be the cell phone number that received the calls related to this settlement.)

Email Address: _____ (optional)

Contact Phone Number: () _____ - _____
(Please provide a phone number where you can be reached if further information is required.)

Your Personal Claim Number: _____ (Optional, unless you received an e-mail or postcard notice.)
(If you received an email or postcard notice regarding this settlement, it will list your Personal Claim Number.)

Settlement Class Member Verification

By submitting this Short Claim Form and checking the boxes below, I declare that I am a member of the Settlement Class and the following statements are true (boxes 1, 4, and either 2 or 3 below must be checked for the form to be valid):

- (1) I received at least one call from Infinity on behalf of Nuance regarding an offer for a Nuance product on my United States cellular phone number listed above between May 8, 2009 and [date]. [*this must be checked for the form to be valid*]
- (2) Prior to receiving any such call from Infinity on behalf of Nuance, I did not provide Nuance with express consent to call my cell phone. [*either box 2 or 3 must be checked for the form to be valid*]
- (3) I received at least two calls within a twelve (12) month period from Infinity on behalf of Nuance regarding an offer for a Nuance product on my cellular phone number listed above while that number was listed on the National Do-Not-Call registry, and I did not provide Nuance with consent to call my cell phone. [*either box 2 or 3 must be checked for the form to be valid*]
- (4) Under penalty of perjury, all information provided in this Claim Form is true and correct to the best of my knowledge and belief. [*this must be checked for the form to be valid*]

Signature: _____ Print Name: _____	Date: _____ Your claim will be submitted to the Settlement Administrator for review. If your Claim Form is incomplete, untimely, or contains false information, it may be rejected by the Settlement Administrator. If your claim is approved, you will be mailed a check at the street address you provide. This process takes time; please be patient.
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CLAIM FORMS MUST BE SUBMITTED ONLINE OR POSTMARKED NO LATER THAN [Claims Deadline] TO BE ELIGIBLE FOR PAYMENT. FILE ONLINE AT: www.SoftwareCallSettlement.com OR MAIL THIS CLAIM FORM TO: Claims Administrator, [Address]. If you have questions, you may call Class Counsel at [toll-free number].