

1 PAUL FRIEDMAN (SBN 98381)  
pfriedman@mofocom  
2 TIFFANY CHEUNG (SBN 211497)  
tcheung@mofocom  
3 MARGARET MAYO (SBN 259685)  
mmayo@mofocom  
4 MORRISON & FOERSTER LLP  
425 Market Street  
5 San Francisco, CA 94105  
Telephone: (415) 268-7000  
6 Facsimile: (415) 268-7522

7 *Attorneys for Defendant*  
NUANCE COMMUNICATIONS, INC.

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 WILLIAM HOPWOOD and  
13 TERESA MARTINEZ, individually and on behalf  
of all others similarly situated,  
14  
Plaintiffs,  
15  
v.  
16 NUANCE COMMUNICATIONS, INC., a  
Delaware corporation,  
17  
Defendant.  
18

Case No. CV-13-2132 (MEJ)  
**DEFENDANT NUANCE  
COMMUNICATIONS, INC.’S  
ANSWER TO CLASS ACTION  
COMPLAINT**

19  
20 Defendant Nuance Communications, Inc. (“Nuance”), by and through its attorneys,  
21 hereby answers the Complaint of Plaintiffs William Hopwood and Teresa Martinez  
22 (“the Complaint”). To the extent that factual averments are contained in the headings in the  
23 Complaint, Nuance denies such averments, or is without sufficient knowledge or information to  
24 form a belief as to the truth of such averments, and on that basis denies them.

25 Responding to the introductory paragraph of the Complaint, Nuance states that Plaintiffs  
26 purport to bring a class action against Nuance. Nuance denies that class treatment is appropriate.  
27 Except as expressly stated, Nuance denies each and every averment contained in the introductory  
28 paragraph of the Complaint. Nuance denies that Plaintiffs or the members of the purported

1 classes have been injured or damaged in any way and further denies that Plaintiffs or the  
2 members of the purported classes are entitled to relief of any kind. Nuance denies that it engaged  
3 in any unlawful, unethical, or otherwise wrongful conduct.

4 **NATURE OF THE CASE**

5 1. Responding to paragraph 1 of the Complaint, Nuance states that it is a  
6 multinational computer software technology corporation that offers speech and imaging  
7 applications to customers. Except as expressly stated, Nuance denies each and every averment  
8 contained in paragraph 1.

9 2. Responding to paragraph 2 of the Complaint, Nuance denies each and every  
10 averment contained in paragraph 2.

11 3. Responding to paragraph 3 of the Complaint, Nuance denies each and every  
12 averment contained in paragraph 3. Nuance denies that Plaintiffs or the members of the  
13 purported classes have been injured or damaged in any way.

14 4. Responding to paragraph 4 of the Complaint, Nuance denies each and every  
15 averment contained in paragraph 4.

16 5. Responding to paragraph 5 of the Complaint, Nuance states that Plaintiffs filed the  
17 instant lawsuit and purport to seek an injunction and an award of statutory damages to the  
18 members of a putative class under the Telephone Consumer Protection Act, 47 U.S.C. § 227,  
19 *et seq.* (“TCPA”). Nuance further states that to the extent the averments in paragraph 5 state  
20 conclusions of law, no response thereto is required. Nuance denies that class treatment is  
21 appropriate. Nuance denies that Plaintiffs or the members of the purported classes have been  
22 injured or damaged in any way and further denies that Plaintiffs or the members of the purported  
23 classes are entitled to relief of any kind. Except as expressly stated, Nuance denies each and  
24 every averment contained in paragraph 5.

25 **PARTIES**

26 6. Responding to paragraph 6 of the Complaint, Nuance is without knowledge or  
27 information sufficient to form a belief as to the truth of the averments in paragraph 6, and on that  
28 basis, denies the averments.

1 7. Responding to paragraph 7 of the Complaint, Nuance is without knowledge or  
 2 information sufficient to form a belief as to the truth of the averments in paragraph 7, and on that  
 3 basis, denies the averments.

4 8. Responding to paragraph 8 of the Complaint, Nuance states that to the extent the  
 5 averments contained in paragraph 8 state conclusions of law, no response thereto is required. To  
 6 the extent that the averments in this paragraph do not state conclusions of law, Nuance admits the  
 7 averments contained in paragraph 8.

8 **JURISDICTION AND VENUE**

9 9. Responding to paragraph 9 of the Complaint, Nuance states that the averments  
 10 contained in paragraph 9 state conclusions of law, and no response thereto is required.

11 10. Responding to paragraph 10 of the Complaint, Nuance states that to the extent the  
 12 averments contained in paragraph 10 state conclusions of law, and no response thereto is  
 13 required.

14 **COMMON FACTUAL ALLEGATIONS**

15 11. Responding to paragraph 11 of the Complaint, Nuance denies each and every  
 16 averment contained in this paragraph.

17 12. Responding to paragraph 12 of the Complaint, Nuance denies each and every  
 18 averment contained in this paragraph.

19 13. Responding to paragraph 13 of the Complaint, Nuance states that to the extent the  
 20 averments contained in paragraph 13 state conclusions of law, no response thereto is required. To  
 21 the extent that the averments in paragraph 13 do not state conclusions of law, Nuance denies each  
 22 and every averment contained in this paragraph.

23 14. Responding to paragraph 14 of the Complaint, Nuance denies having made any  
 24 telephone calls to Plaintiffs or members of the putative class. Nuance is without knowledge or  
 25 information sufficient to form a belief as to the truth of the remaining averments in paragraph 14,  
 26 and on that basis, denies the averments. To the extent that the averments contained in  
 27 paragraph 14 state conclusions of law, Nuance states that no response thereto is required.  
 28

1 15. Responding to paragraph 15 of the Complaint, Nuance denies each and every  
2 averment contained in this paragraph. To the extent that the averments contained in paragraph 15  
3 state conclusions of law, Nuance states that no response thereto is required.

4 16. Responding to paragraph 16 of the Complaint, Nuance admits that consumers who  
5 call 866-771-6288 are provided the option to request that a phone number be removed from a  
6 calling list. Nuance further admits that, at the time of the filing of this Answer, the automated  
7 message states that a removal request “will be processed within 7 days or less.” Except as  
8 expressly admitted, Nuance denies each and every averment contained in paragraph 16.

9 **FACTS SPECIFIC TO PLAINTIFF HOPWOOD**

10 17. Responding to paragraph 17 of the Complaint, Nuance states that Plaintiff William  
11 Hopwood (“Hopwood”) has purchased several products from Nuance. Except as expressly  
12 stated, Nuance is without knowledge or information sufficient to form a belief as to the truth of  
13 the remaining averments in paragraph 17, and on that basis, denies the averments.

14 18. Responding to paragraph 18 of the Complaint, Nuance states that Plaintiff  
15 Hopwood has created an account and has registered his products with Nuance.

16 19. Responding to paragraph 19 of the Complaint, Nuance is without knowledge or  
17 information sufficient to form a belief as to the truth of the averments in paragraph 19, and on that  
18 basis, denies the averments.

19 20. Responding to paragraph 20 of the Complaint, Nuance denies each and every  
20 averment contained in paragraph 20.

21 21. Responding to paragraph 21 of the Complaint, Nuance denies each and every  
22 averment contained in paragraph 21.

23 22. Responding to paragraph 22 of the Complaint, Nuance denies each and every  
24 averment contained in paragraph 22.

25 23. Responding to paragraph 23 of the Complaint, Nuance denies each and every  
26 averment contained in paragraph 23.

27 24. Responding to paragraph 24 of the Complaint, Nuance denies each and every  
28 averment contained in paragraph 24.

1 25. Responding to paragraph 25 of the Complaint, Nuance is without knowledge or  
2 information sufficient to form a belief as to the truth of the averments in paragraph 25, and on that  
3 basis, denies the averments.

4 26. Responding to paragraph 26 of the Complaint, Nuance denies making any of the  
5 telephone calls described in paragraph 26. Nuance is without knowledge or information  
6 sufficient to form a belief as to the truth of the remaining averments in paragraph 26, and on that  
7 basis, denies the averments.

8 27. Responding to paragraph 27 of the Complaint, Nuance denies each and every  
9 averment contained in paragraph 27.

10 **FACTS SPECIFIC TO PLAINTIFF MARTINEZ**

11 28. Responding to paragraph 28 of the Complaint, Nuance is without knowledge or  
12 information sufficient to form a belief as to the truth of the averments in paragraph 28, and on that  
13 basis, denies the averments.

14 29. Responding to paragraph 29 of the Complaint, Nuance denies each and every  
15 averment contained in paragraph 29.

16 30. Responding to paragraph 30 of the Complaint, Nuance is without knowledge or  
17 information sufficient to form a belief as to the truth of the averments in paragraph 30, and on that  
18 basis, denies the averments.

19 31. Responding to paragraph 31 of the Complaint, Nuance is without knowledge or  
20 information sufficient to form a belief as to the truth of the averments in paragraph 31, and on that  
21 basis, denies the averments.

22 32. Responding to paragraph 32 of the Complaint, Nuance denies each and every  
23 averment contained in paragraph 32.

24 33. Responding to paragraph 33 of the Complaint, Nuance denies each and every  
25 averment contained in paragraph 33.

26 34. Responding to paragraph 34 of the Complaint, Nuance denies the averments in this  
27 paragraph or is without knowledge or information sufficient to form a belief as to the truth of the  
28 averments in paragraph 34, and on that basis, denies the averments.

1 35. Responding to paragraph 35 of the Complaint, Nuance is without knowledge or  
2 information sufficient to form a belief as to the truth of the averments in paragraph 35, and on that  
3 basis, denies the averments.

4 36. Responding to paragraph 36 of the Complaint, Nuance denies each and every  
5 averment contained in paragraph 36.

6 37. Responding to paragraph 37 of the Complaint, Nuance denies each and every  
7 averment contained in paragraph 37.

### 8 CLASS ALLEGATIONS

9 38. Responding to paragraph 38 of the Complaint, Nuance states that Plaintiff  
10 Hopwood purports to bring this action on behalf of himself and a class defined as “Cell Phone  
11 (No Consent) Class: All individuals in the United States to whom Defendant (1) placed a call  
12 promoting its product or services; (2) to a cellular telephone number; (3) on which the individual  
13 called never consented to receive telephone calls from Defendant” and a class defined as “Cell  
14 Phone (Revocation) Class: All individuals in the United States to whom Defendant (1) placed a  
15 telephone call; (2) to his or her cellular telephone; (3) who expressly requested that Defendant  
16 stop making calls to him or her; (4) and more than 7 days thereafter; (5) Defendant made an  
17 additional telephone call to his or her cellular telephone.” Nuance further states that states that  
18 Plaintiff Teresa Martinez (“Martinez”) purports to bring this action on behalf of herself and a  
19 class defined as “Do Not Call (No Consent) Class: All individuals in the United States (1) who  
20 had his or her telephone number(s) registered with the National Do Not Call Registry; (2) who  
21 never consented to be contacted by Defendant; (3) to which Defendant made more than one  
22 telephone call; (4) promoting Defendant’s products or services; (5) within any 12-month period.”  
23 Nuance further states that states that Plaintiffs jointly purport to bring this action on behalf of  
24 themselves and a class defined as “Do Not Call (Revocation) Class: All individuals in the United  
25 States (1) who had his or her telephone number(s) registered with the National Do Not Call  
26 Registry; (2) who expressly requested that Defendant stop making calls to him or her; (4) [sic]  
27 and more than 7 days thereafter; (4) Defendant made an additional telephone call to him or her.”  
28 Nuance further states that Plaintiffs purport to exclude the following from the classes:

1 l) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity  
2 in which the Defendant or its parents have a controlling interest and their current and former  
3 employees, officers, and directors, 2) the Judge or Magistrate Judge to whom this case is assigned  
4 and the Judge's or Magistrate Judge's immediate family, 3) persons who execute and file a timely  
5 request for exclusion, 4) the legal representatives, successors, or assigns of any such excluded  
6 person; and 5) Plaintiffs' counsel and Defendant's counsel. Except as expressly stated, Nuance  
7 denies each and every averment contained in paragraph 38. Nuance denies that class treatment is  
8 appropriate.

9 39. Responding to paragraph 39 of the Complaint, Nuance states that to the extent the  
10 averments contained in paragraph 39 state conclusions of law, no response thereto is required.  
11 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
12 each and every averment contained in this paragraph.

13 40. Responding to paragraph 40 of the Complaint, Nuance states that to the extent the  
14 averments contained in paragraph 40 state conclusions of law, no response thereto is required.  
15 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
16 each and every averment contained in this paragraph.

17 41. Responding to paragraph 41 of the Complaint, Nuance states that to the extent the  
18 averments contained in paragraph 41 state conclusions of law, no response thereto is required.  
19 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
20 each and every averment contained in this paragraph.

21 42. Responding to paragraph 42 of the Complaint and each of its subparts, Nuance  
22 states that to the extent the averments contained in paragraph 42 or its subparts state conclusions  
23 of law, no response thereto is required. To the extent that the averments in this paragraph or its  
24 subparts do not state conclusions of law, Nuance denies each and every averment contained in  
25 this paragraph.

26 43. Responding to paragraph 43 of the Complaint, Nuance states that to the extent the  
27 averments contained in paragraph 43 state conclusions of law, no response thereto is required.  
28

1 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
2 each and every averment contained in this paragraph.

3 **COUNT I**

4 **Violation of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii)**  
5 **(On behalf of Plaintiff Hopwood, the Cell Phone (No Consent) Class,**  
6 **and the Cell Phone (Revocation) Class)**

7 44. Responding to paragraph 44 of the Complaint, Nuance restates and incorporates by  
8 reference each and every preceding paragraph of this Answer as if fully set forth herein.

9 45. Responding to paragraph 45 of the Complaint, Nuance states that to the extent the  
10 averments contained in paragraph 45 state conclusions of law, no response thereto is required.

11 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
12 each and every averment contained in this paragraph.

13 46. Responding to paragraph 46 of the Complaint, Nuance states that to the extent the  
14 averments contained in paragraph 46 state conclusions of law, no response thereto is required.

15 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
16 each and every averment contained in this paragraph.

17 47. Responding to paragraph 47 of the Complaint, Nuance states that to the extent the  
18 averments contained in paragraph 47 state conclusions of law, no response thereto is required.

19 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
20 each and every averment contained in this paragraph.

21 48. Responding to paragraph 48 of the Complaint, Nuance states that to the extent the  
22 averments contained in paragraph 48 state conclusions of law, no response thereto is required.

23 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
24 each and every averment contained in this paragraph.

25 49. Responding to paragraph 49 of the Complaint, Nuance states that to the extent the  
26 averments contained in paragraph 49 state conclusions of law, no response thereto is required.

27 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
28 each and every averment contained in this paragraph.





1 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
2 each and every averment contained in this paragraph.

3 56. Responding to paragraph 56 of the Complaint, Nuance states that to the extent the  
4 averments contained in paragraph 56 state conclusions of law, no response thereto is required.

5 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
6 each and every averment contained in this paragraph.

7 57. Responding to paragraph 57 of the Complaint, Nuance states that to the extent the  
8 averments contained in paragraph 57 state conclusions of law, no response thereto is required.

9 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
10 each and every averment contained in this paragraph.

11 58. Responding to paragraph 58 of the Complaint, Nuance states that to the extent the  
12 averments contained in paragraph 58 state conclusions of law, no response thereto is required.

13 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
14 each and every averment contained in this paragraph.

15 59. Responding to paragraph 59 of the Complaint, Nuance states that to the extent the  
16 averments contained in paragraph 59 state conclusions of law, no response thereto is required.

17 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
18 each and every averment contained in this paragraph.

19 60. Responding to paragraph 60 of the Complaint, Nuance states that to the extent the  
20 averments contained in paragraph 60 state conclusions of law, no response thereto is required.

21 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
22 each and every averment contained in this paragraph.

23 61. Responding to paragraph 61 of the Complaint, Nuance states that to the extent the  
24 averments contained in paragraph 61 state conclusions of law, no response thereto is required.

25 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
26 each and every averment contained in this paragraph.

27 62. Responding to paragraph 62 of the Complaint, Nuance states that to the extent the  
28 averments contained in paragraph 62 state conclusions of law, no response thereto is required.

1 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
2 each and every averment contained in this paragraph.

3 63. Responding to paragraph 63 of the Complaint, Nuance states that to the extent the  
4 averments contained in paragraph 63 state conclusions of law, no response thereto is required.

5 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
6 each and every averment contained in this paragraph.

7 64. Responding to paragraph 64 of the Complaint, Nuance states that to the extent the  
8 averments contained in paragraph 64 state conclusions of law, no response thereto is required.

9 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
10 each and every averment contained in this paragraph. Nuance further denies that Plaintiffs or the  
11 members of the purported classes are entitled to any damages and denies that it engaged in any  
12 unlawful conduct.

13 65. Responding to paragraph 65 of the Complaint, Nuance states that to the extent the  
14 averments contained in paragraph 65 state conclusions of law, no response thereto is required.

15 To the extent that the averments in this paragraph do not state conclusions of law, Nuance denies  
16 each and every averment contained in this paragraph. Nuance further denies that Plaintiffs or the  
17 members of the purported classes are entitled to any damages and denies that it engaged in any  
18 unlawful conduct willfully or knowingly.

### 19 **PRAYER FOR RELIEF**

20 Nuance denies that Plaintiffs' purported classes or any other class can properly be  
21 certified in this action. Nuance further denies that Plaintiffs or the members of the purported  
22 classes suffered injury or damage, or that Plaintiffs or the members of the purported classes are  
23 entitled to relief of any kind.

### 24 **AFFIRMATIVE DEFENSES**

25 As to affirmative defenses to the Complaint, Nuance does not, by stating the matters set  
26 forth in these defenses, allege or admit that it has the burden of proof and/or persuasion with  
27 respect to any of these matters, and does not assume the burden of proof or persuasion as to any  
28 matters as to which Plaintiffs have the burden of proof or persuasion.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST AFFIRMATIVE DEFENSE**

**(No Standing)**

The claims of Plaintiffs and/or the alleged class members are barred because they lack standing to assert any claims against Nuance.

**SECOND AFFIRMATIVE DEFENSE**

**(Consent)**

The claims of Plaintiffs and the alleged class members are barred because they consented to receiving the calls at issue.

**THIRD AFFIRMATIVE DEFENSE**

**(Established Business Relationship)**

The claims of Plaintiffs and the alleged class members are barred because Defendant had an established business relationship with Plaintiff and members of the putative classes during the relevant time period. For example, Plaintiff Hopwood concedes that he has “purchased several Nuance products since 2006” and that he “created an account with Nuance and registered his products.”

**FOURTH AFFIRMATIVE DEFENSE**

**(Bona Fide Error)**

The claims of Plaintiffs and the purported classes are barred because, although Nuance denies each and every claim of Plaintiffs and the purported classes and denies that Nuance engaged in wrongdoing or error of any kind, any alleged error on Nuance’s part was a bona fide error notwithstanding Nuance’s use of reasonable procedures adopted to avoid any such error.

**FIFTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

The claims of Plaintiffs and the alleged class members are barred by the doctrine of estoppel because they expressly or by their conduct approved, authorized, ratified, or permitted the alleged conduct when they consented to the calls at issue.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIXTH AFFIRMATIVE DEFENSE**

**(Adequate Remedy at Law)**

Plaintiffs’ and the alleged class members’ claims for equitable relief are barred because Plaintiffs and the members of the putative classes have an adequate remedy at law.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Injury Not Proximately Caused by Defendant)**

To the extent that Plaintiffs or the members of the putative classes have suffered injury or damages, such injury or damages were not caused by any conduct or inaction by Nuance but were caused by others, were not foreseeable, or both.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Agency)**

Any damages, injury, violation of law, or wrongdoing alleged in the Complaint was solely caused by actions of third parties for which Nuance cannot be held liable. For example, to the extent any call(s) were made in violation of 47 U.S.C. § 227(c)(5) by a third party, which Nuance denies, Nuance is not liable for any alleged violation(s) by any third party.

**NINTH AFFIRMATIVE DEFENSE**

**(Intervening or Superseding Conduct)**

Plaintiffs’ and the putative class members’ claims are barred, in whole or in part, because any injuries sustained by Plaintiffs and the putative classes were the result of intervening or superseding conduct of other parties.

**TENTH AFFIRMATIVE DEFENSE**

**(Establishment and Implementation of Reasonable Practices and Procedures to Prevent Violations)**

Plaintiffs’ and the putative class members’ claims are barred, in whole or in part, because Nuance and/or its agents have established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Additional Affirmative Defenses)**

Nuance has not completed its investigation and discovery regarding the facts and claims asserted by Plaintiffs. Accordingly, Nuance reserves the right to seek leave of Court to add such additional affirmative defenses as necessary based on Nuance's ongoing investigation and discovery.

WHEREFORE, Nuance prays for judgment against Plaintiffs (and each putative class member) as follows:

1. That Plaintiffs and each putative class member take nothing by way of the Complaint;
2. That the Complaint be dismissed on the merits and with prejudice;
3. That Nuance be awarded its attorneys' fees and costs of suit incurred herein; and
4. That Nuance receive such other and further relief as the Court deems proper.

Dated: July 15, 2013

MORRISON & FOERSTER LLP

By: /s/ Tiffany Cheung  
Tiffany Cheung

Attorneys for Defendant

NUANCE COMMUNICATIONS, INC.