

CONFIRMING

FILED

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2012 OCT 10 PM 1:25  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

6 Attorneys for Defendant  
7 NUANCE COMMUNICATIONS, INC.

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

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MICHAEL NATHAN; individually and on  
behalf of others similarly situated,

Plaintiffs,

v.

FRY'S ELECTRONICS, INC.; NUANCE  
COMMUNICATIONS, INC.; VLADIMIR  
PLESKOV; SYED N. FAHAD; JOHN FRY;  
DAVE FRY; RANDY FRY; and JOHN  
DOE 1; JOHN DOE 2; and DOES 1 TO 100,  
Inclusive,

Defendants.

**CV12-8677-PSG**

Case No.

**DEFENDANT NUANCE  
COMMUNICATIONS,  
INC.'S NOTICE OF  
REMOVAL  
[28 U.S.C. § 1446(D)]**

(RZ)

[Los Angeles Superior Court  
Case No. BC491300]

1 TO THE CLERK OF THE UNITED STATE DISTRICT COURT, CENTRAL  
2 DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Defendant Nuance Communications, Inc.  
4 (“Nuance”) hereby removes this action from the Superior Court of California,  
5 County of Los Angeles to the United States District Court for the Central District of  
6 California pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

7 **Procedural History and Timeliness of Removal**

8 1. On August 31, 2012, Plaintiff Michael Nathan, purportedly on behalf  
9 of herself and all others similarly situated, filed a civil action in Los Angeles  
10 Superior Court entitled *Michael Nathan v. Fry’s Electronics, Inc., et al.*, Case No.  
11 BC491300. (See Exhibit A to the Declaration of David F. McDowell.)

12 2. On September 10, 2012, Plaintiff served the complaint upon Nuance  
13 by personal service. (McDowell Dec. ¶ 3.) Nuance’s removal notice is timely. See  
14 28 U.S.C. § 1446(b) (removal is timely if filed within 30 days of defendant’s  
15 receipt of the pleading).

16 **Basis for Removal Jurisdiction**

17 3. Generally. The action is removable pursuant to the Class Action  
18 Fairness Act of 2005 (CAFA), 28 U.S.C. §§ 1332(d) and 1453(b), for at least the  
19 following reasons:

20 4. Covered Class Action. Plaintiff purports to bring the action on behalf  
21 of “all persons who have or have had at any time since August 1, 2008, purchased a  
22 Dragon Speech Recognition Software from Nuance, its subsidiaries, online stores,  
23 retailers, or any other authorized vendors of Nuance in the State of California.”  
24 (Complaint ¶ 45.) Plaintiff alleges that the class may include over “100,000  
25 Dragon Software purchasers.” (Compl. ¶ 47.) See 28 U.S.C. §§ 1132(d)(1) & (2),  
26 1453(a) & (b).

27 5. Diversity. The action satisfies the diversity requirement of CAFA, 28  
28 U.S.C. § 1332(d)(2)(A). Plaintiff alleges that he is a resident of California and that

1 the class consists of individuals who purchased the Dragon Software in California.  
2 (Compl. ¶¶ 27, 45.) As of the date the complaint was filed in Los Angeles Superior  
3 Court and as of the date of this removal, Nuance is a Delaware corporation with its  
4 principal place of business in the State of Massachusetts. (Declaration of Jo-Anne  
5 Sinclair ¶ 2.) See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010) (adopting  
6 the “nerve center test,” which locates a corporation’s principal place of business in  
7 the place “where the corporation’s high level officers direct, control, and coordinate  
8 the corporation’s activities,” “typically” the corporation’s headquarters).  
9 Accordingly, pursuant to 28 U.S.C. section 1332(c)(1), defendant Nuance is, and at  
10 all relevant times, was a citizen of Delaware and Massachusetts.

11 6. The minimal diversity standard of CAFA is met as long as any one  
12 defendant is a citizen of a different state than any of the named plaintiffs. 28  
13 U.S.C. § 1332(d)(2)(A). The allegations in the Notice of Removal concerning  
14 Nuance’s citizenship alone are sufficient to establish minimal diversity when  
15 combined with the allegation concerning plaintiff’s citizenship in the Complaint,  
16 and no set of facts relating to the citizenship of Nuance would change that result.

17 7. Amount in Controversy – Alleged Damages. Plaintiff alleges that  
18 Nuance defrauded, misled, and misinformed consumers “through deceptive design  
19 and policies and sale of their software and products.” (Compl. at 2:7-8.) The  
20 complaint alleges 8 causes of action for the alleged wrongdoings. (Compl. ¶¶ 58-  
21 128.)

22 8. Nuance disputes that it is liable to plaintiff or to the putative class. A  
23 plain reading of the complaint, however, demonstrates that the amount in  
24 controversy exceeds \$5,000,000 for purposes of removal. The complaint alleges as  
25 recoverable damages, inter alia: “the money Plaintiff suffered due to failure to  
26 receive refund,” “three times the amount of the actual loss,” and “punitive  
27 damages.” (Compl. ¶¶ 62, 88.)

28 9. As demonstrated by the attached Declaration of Jo-Anne Sinclair,

1 between August 1, 2008 and August 31, 2008, the time period covered by  
2 plaintiff's complaint, Nuance sold at least \$5 million of Dragon Naturally Speaking  
3 software in California. (Sinclair Dec. ¶ 5). Thus, the amount in controversy in this  
4 action exceeds \$5,000,000. (*Id.*)

5 10. Matter in Controversy – Attorney's Fees. Plaintiff also seeks an award  
6 of attorney's fees. (Compl. ¶¶ 63, 77, 123, 128, and Prayer for Relief ¶ 12.) This  
7 amount should also be included in connection with the amount in controversy. *See*  
8 *Goldberg v. CPC Int'l, Inc.*, 678 F.2d 1365 (9th Cir. 1982).

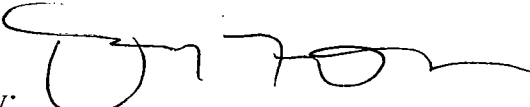
9 11. No CAFA Exclusions. The action does not fall within any exclusion  
10 to removal jurisdiction recognized by 28 U.S.C. section 1332(d) because Nuance is  
11 not a citizen of California, the state in which the action originally was filed, and no  
12 other exclusion applies.

13 **Notice to State Court**

14 12. A copy of this Notice of Removal is being filed with the Clerk of the  
15 Superior Court for the County of Los Angeles. (*See* McDowell Dec. Ex. B.,  
16 attaching without exhibits the state court removal notice.)

17 Dated: October 10, 2012

18 DAVID F. MCDOWELL  
19 GIANCARLO UREY  
20 MORRISON & FOERSTER LLP

21 By: 

22 David F. McDowell

23 Attorneys for Defendant  
24 NUANCE COMMUNICATIONS,  
25 INC.

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**CERTIFICATE OF SERVICE BY MAIL**  
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 555 West Fifth Street, Los Angeles, California 90013-1024; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**DEFENDANT NUANCE COMMUNICATIONS, INC.'S  
NOTICE OF REMOVAL [28 U.S.C. § 1446(d)]**

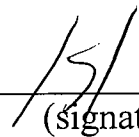
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Los Angeles, California 90013-1024, in accordance with Morrison & Foerster's ordinary business practices:

Motaz M. Gerges, Esq.	Alexis J. Curotto, Esq.
Andrew L. Levin	Fry's Electronics
Law Office of Motaz M. Gerges	600 E. Brokaw Road
15315 Magnolia Boulevard	San Jose, CA 95112
Suite 429	
Sherman Oaks, CA 91403	

I declare under penalty of perjury that the above is true and correct.

Executed at Los Angeles, California, this 10th day of October, 2012.

\_\_\_\_\_  
Rosa L. Beltran  
(typed)

\_\_\_\_\_  
  
(signature)