

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between plaintiffs Ricardo T. Mascarenas and Christopher Gregory (“Plaintiffs”), for themselves and the Settlement Class Members (as defined below), and defendants Appstack, Inc. (“Appstack”), Steve Espinosa, and John Zdanowski (collectively “Defendants”). Plaintiffs and Defendants are referred to collectively in this Settlement Agreement as the “Parties.”

I. RECITALS

A. Monty Booth filed a lawsuit against Appstack under the caption *Booth v. Appstack, Inc.*, No. 2:13-cv-01533-JLR (W.D. Wash.) (“Action”). The Action is pending in the United States District Court for the Western District of Washington and is assigned to the Honorable James L. Robart. Mr. Booth asserted claims under Washington’s Automatic Dialing and Announcing Device Statute (“WADAD”), RCW 80.36.400. Mr. Booth amended his complaint to add Steve Espinosa and John Zdanowski as defendants. Mr. Booth filed a Second Amended Complaint to add Plaintiffs and claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(b)(1)(A)(iii).

B. The Court certified two Classes, a WADAD Class and a TCPA Class. The Court decertified the WADAD Class, leaving only the TCPA Class claims and Mr. Booth’s individual WADAD claim for trial.

C. Defendants deny all claims asserted in this Action. Defendants also deny all allegations of wrongdoing and liability in this Action and deny that Plaintiffs’ claims are appropriate for class treatment at trial. Defendants seek to settle the Action for the sole purpose of avoiding the burden and expense of continuing to litigate this Action.

D. Class Counsel have investigated the facts and law underlying Plaintiffs’ claims. Class Counsel have conducted extensive written discovery, which required Defendants to produce thousands of pages of documents and data. Class Counsel have also deposed Zdanowski, Espinosa, and employees and officers of Appstack. Class Counsel have thoroughly assessed the strengths and weaknesses of their case, including Defendants’ ability to pay a

judgment.

E. The Parties and their counsel have engaged in extensive and arm's-length negotiations concerning settlement of the claims asserted in the Action, including participating in private mediation with Bruce A. Friedman, Esq. of JAMS, an experienced mediator of TCPA class action lawsuits.

F. As a result of the abovementioned efforts of the Parties and their counsel, the Parties entered into this Settlement Agreement. Subject to this Court's approval, this Settlement Agreement will fully and forever resolve, discharge, and release all rights and claims of Plaintiffs and the Settlement Class Members (as defined below). In exchange, Defendants agree to pay \$975,000 to create a common fund for the benefit of Plaintiffs and the Settlement Class Members. To the extent they engage in telemarketing in the future, Zdanowski and Espinosa have further agreed to abide by certain practices and procedures designed to prevent calls using an automated dialer to cell phone numbers.

G. Plaintiffs and their counsel have concluded, based upon their investigation and thorough assessment, and taking into account Defendants' defenses and case, the expense and time necessary to continue to litigate the Action through trial, the risks and costs associated with any further proceedings and potential appeals, the uncertainties of proving the claims asserted in the Action, the substantial benefits to be received pursuant to this Settlement Agreement, and the risk that they will be unable to collect on a judgment due to Defendants' financial difficulties, that a settlement with Defendants and the terms of this Settlement Agreement are fair and reasonable, as well as in the best interest of Plaintiffs and the Settlement Class Members.

H. Appstack is a defunct and out of business entity, and is no longer an active business entity.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the Parties, for themselves and through their undersigned counsel, agree to the following settlement, subject to Court approval, under the following terms and conditions:

II. DEFINITIONS

In addition to the terms defined in other Sections of this Settlement Agreement, the following defined terms apply to this Settlement Agreement and its exhibits:

1. “Approved Claims” means claims that have been timely submitted and approved by the Claims Administrator under the terms of this Settlement Agreement.
2. “Calls” means calls placed by Defendants through the use of an automatic telephone dialing system to a cellular telephone number.
3. “Claims Administrator” means Epiq Systems, Inc.
4. “Claim Form” means the claim form to be submitted by Settlement Class Members in order to receive the Settlement Award. “Claim Form” refers to both the electronic form available on the Settlement Website and the .pdf form in substantially the form attached as Exhibit A that may be downloaded from the Settlement Website, printed, completed, and submitted via U.S. Mail.
5. “Claim Period” means the period of time during which Settlement Class Members must submit a Claim Form in order to be eligible to receive a Settlement Award. The Claim Period will end 60 calendar days following the Settlement Notice Date.
6. “Class Counsel” or “Plaintiffs’ Counsel” means the law firms of Terrell Marshall Law Group and Gallagher Law Offices P.S.
7. “Court” means the United States District Court for the Western District of Washington.
8. “Effective Date” means the fifth day after the later of the following events:
 - a. The Court has entered the Final Approval Order; and
 - b. The final disposition of any related appeals, or, in the case of no appeal or review being filed, expiration of the applicable appellate period.
9. “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the Settlement and to determine the amount of fees and expenses awarded to Class Counsel and the amount of the service awards to Plaintiffs.

10. “Final Approval Order” means the order and judgement that the Court enters after finally approving the Settlement, substantially in the form attached hereto as Exhibit B.

11. “Settlement Notice” means the notice that will be provided pursuant to Section VII.3 of this Settlement Agreement,

12. “Postcard Notice” means the notice postcard that will be sent to Settlement Class Members substantially in the same form as Exhibit C.

13. “Notice Plan” means the proposed plan of sending notice to the Settlement Class of the proposed Settlement as set forth in Section VII.3 of this Settlement Agreement.

14. “Objection Deadline” means 60 calendar days from the Settlement Notice Date.

15. “Opt-Out Deadline” means 60 calendar days from the Settlement Notice Date.

16. “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement, substantially in the form attached hereto as Exhibit D.

17. “Released Claims” means all claims to be released as set forth in Section XII.2 of this Settlement Agreement.

18. “Released Parties” means Defendants and their agents, insurers, shareholders, attorneys, advisors, representatives, successors, predecessors, assigns, and each and all of their respective executors, successors, assigns, and representatives.

19. “Remaining Settlement Fund” means the amount in the Settlement Fund remaining after the payment of settlement administration expenses, attorneys’ fees, costs, and expenses, and Service Awards as set forth in Section IV.3 below.

20. “Settlement” means the settlement contemplated by this Settlement Agreement.

21. “Settlement Award” means a cash payment that may be available to eligible Settlement Class Members.

22. “Settlement Class” means all persons or entities in the United States who, on or after four years before the filing of this action to July 21, 2016, received a call to their cellular telephone line with a pre-recorded message, made by or on behalf of Defendants.

23. “Settlement Class Members” means all persons in the Settlement Class who do not request to be excluded from this Settlement.

24. “Settlement Costs” means (i) any award of attorneys’ fees and costs to Class Counsel approved by the Court; (ii) any service awards to Plaintiffs approved by the Court; (iii) all costs of printing and providing notice to persons in the Settlement Class; (iv) all costs of administering the Settlement, including, but not limited to, the cost of printing and mailing settlement payments and Claim Forms and the cost of maintaining a designated post office box for receiving Claim Forms and the cost of establishing and maintaining the Settlement Website; and (v) the fees, expenses and all other costs of the Claims Administrator.

25. “Settlement Fund” means the total cash sum of \$975,000 to be paid by Defendants pursuant to Sections IV.1– IV.4 of this Settlement Agreement.

26. “Settlement Notice Date” means the date the Settlement Notices are sent pursuant to the Notice Plan.

27. “Settlement Website” means the website that will be established and maintained by the Claims Administrator as set forth in this Settlement Agreement and which includes detailed information regarding the Settlement that will be downloadable in substantially the form as set forth in Exhibit E.

III. SETTLEMENT TERMS

1. Certification of a Settlement Class. The Court certified a TCPA class during the litigation. Defendants believe that such a litigation class is neither manageable nor proper under Rule 23 of the Federal Rules of Civil Procedure. However, for the sole purpose of settlement, the Parties and their counsel agree to conditional certification of the Settlement Class. Preliminary approval of the Settlement Class shall not be deemed a concession that certification of a litigation class is proper, and it will not preclude Defendants from challenging class certification in this Action. If the Court does not finally approve of this Settlement for any reason, the certification of the Settlement Class will be void. No agreements made or entered into by Defendants in connection with this Settlement may be used by Plaintiffs, any person in

the Settlement Class, or any other person to establish any liability or any element of class certification in this Action.

IV. SETTLEMENT CONSIDERATION

1. Settlement Fund. Defendants shall pay, on behalf themselves and all Released Parties, \$975,000 to establish a common fund for the benefit of the Settlement Class. The non-reversionary Settlement Fund includes, without limitation, payment for Approved Claims, expenses for notice and class administration, fees and expenses of Class Counsel, service awards to Plaintiffs, and any distribution of the Remaining Settlement Fund. Under no circumstances will Defendants and Released Parties have any further payment obligations to Plaintiffs, any member of the Settlement Class, the Claims Administrator, or Class Counsel.

2. Distributions to Settlement Class Members. Subject to the claims process set forth in this Agreement, each Settlement Class Member is entitled to submit one claim. After deducting the Settlement Costs, the remaining amount in the Settlement Fund will be divided *pro rata* amongst claimants who submit Approved Claims (“Settlement Awards”). No amount shall revert to Defendants. Settlement Awards shall be mailed by the Claims Administrator within 30 days after the Effective Date. The Claims Administrator shall mail, by first class mail, a check to each eligible Settlement Class Member receiving a Settlement Award. The Claims Administrator will perform skip tracing and re-mailing, as necessary; all costs of such work will be considered Settlement Costs and deducted from the Fund. Checks will be valid for 120 days from the date on the check.

3. Remaining Settlement Fund Distribution. Settlement checks that remain uncashed more than 120 days after the date on the check will be contributed to the Legal Foundation of Washington consistent with the provisions of Washington Civil Rule 23(f). The distribution shall be made within 180 days of the mailing of the last Settlement check. No amounts shall revert to Defendants.

4. Payment. Within five (5) calendar days after the Effective Date, Defendants will pay to the Claims Administrator \$975,000 to establish the Settlement Fund.

5. Prospective Relief. As additional consideration, for a period of the two years following the effective date, Zdanowski and Espinosa (“Individual Defendants”) shall comply with the following:

a. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants shall establish written procedures for TCPA compliance.

b. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants shall conduct annual training sessions directed to TCPA compliance.

c. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants shall maintain a list of telephone numbers of persons who request not to be contacted.

d. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants shall subscribe to a version of the national do-not-call registry obtained no more than three months prior to the date any call is made (with records documenting such compliance).

e. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants shall establish internal processes to ensure that Individual Defendants do not sell, rent, lease, purchase or use the do-not-call database in any manner except in compliance with TCPA regulations.

f. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants shall scrub for cellular telephones before making calls using an automated telephone dialing system or prerecorded voice.

g. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants shall not call cellular telephones prior to receipt of the express written permission of the intended recipient.

h. To the extent the Individual Defendants authorize or direct telemarketing activities, the Individual Defendants must maintain records demonstrating that recipients have provided such express written permission to receive autodialed calls to their cellular telephones.

V. SERVICE AWARD TO PLAINTIFFS AND ATTORNEYS' FEES AND EXPENSES

1. Payment to Plaintiffs. Plaintiffs may move the Court for service awards for their time and effort in connection with this Action. Plaintiffs will ask the Court to approve service awards in the amount of \$2,500 for each of the Plaintiffs (\$5,000 total). The Claims Administrator shall issue any approved service awards from the Settlement Fund to Class Counsel within ten (10) days after the Effective Date. Class Counsel will then disburse the payments to Plaintiffs.

2. Attorney's Fees. Class Counsel may move the Court for an award of attorneys' fees and expenses, not to exceed twenty five percent (25%) of the total Settlement Fund as well as reasonable out-of-pocket costs that Class Counsel have incurred prosecuting this litigation. The award to Class Counsel will be paid from the Settlement Fund. Class Counsel will file any motion for an award of attorneys' fees, costs, and Plaintiff service awards within 30 days of the Notice Date. The Claims Administrator will post Class Counsel's motion for an award of fees, costs, and service awards within twenty-four (24) hours after it is filed with the Court. The Claims Administrator shall issue the award of attorneys' fees and expenses from the Settlement Fund to Class Counsel within ten (10) days after the Effective Date.

3. Effect of Lesser Award. If the Court awards service awards to Plaintiffs or fees and costs to Class Counsel that are lower than requested, this Settlement Agreement will remain in full force and will continue to be binding on all Parties, including the Settlement Class Members. No funds shall revert to Defendants.

VI. PRELIMINARY APPROVAL

1. Motion for Preliminary Approval. On or before August 22, 2016, Plaintiffs will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement reflected herein as fair, adequate and

reasonable to the Settlement Class, and within the reasonable range of possible final approval; (b) conditionally certify the Settlement Class for settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only; (c) approve the forms of Settlement Notice and find that the Notice Program constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (d) direct that notice be provided to the Settlement Class, in accordance with this Agreement, within thirty (30) days following entry of the Preliminary Approval Order (the “Notice Deadline”); (e) establish a procedure for Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class, and set a date sixty (60) days after the Notice Deadline, after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class; (f) approve the Claim Form and the claims process described herein; (g) pending final determination of whether the Settlement should be approved, bar all Settlement Class Members, directly, on a representative basis or in any other capacity, from commencing or prosecuting against any of the Released Parties any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (h) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to effectuation of the Settlement; and (i) schedule a hearing on Final Approval of the Settlement, which shall be scheduled no earlier than thirty (30) days after the Opt-Out and Objection Deadline.

VII. ADMINISTRATION AND NOTICE

1. Claims Administrator. The Claims Administrator will be selected by Class Counsel, and shall be responsible for administration of this Settlement. The Claims Administrator shall be allowed to communicate freely with the Parties’ counsel, and will provide updates on a monthly basis to and as requested by the Parties’ counsel.

2. Payment of Administration and Notice. All costs of administering this Settlement will be paid from the Settlement Fund by the Claims Administrator, subject to written approval

by the Parties' counsel. Plaintiffs' counsel will provide an estimate of the total administration costs in their preliminary approval papers.

3. Notice Plan. The Claims Administrator shall provide notice as detailed below within thirty (30) calendar days after the issuance of the Preliminary Approval Order:

a. Notice by U.S. Mail. The Claims Administrator will provide individual notice by sending a postcard through U.S. Mail to each Settlement Class Member. The postcard will describe the basic terms of the Settlement, inform Settlement Class Members of key deadlines, including the deadline to submit claims, exclusion requests and/or objections, and refer Settlement Class Members to the Settlement Website. Before sending notice, the Claims Administrator will update Settlement Class addresses using the National Change of Address Database. If a postcard is returned with a forwarding address, the Claims Administrator will re-send the postcard immediately. If a postcard is returned as undeliverable, the Claims Administrator will perform one "skip trace" to locate an updated address.

b. Settlement Website. Within seven (7) calendar days after entry of the Preliminary Approval Order, the Claims Administrator will also establish and maintain the Settlement Website, which will display the operative Complaint; this Settlement Agreement; the Preliminary Approval Order; and a detailed description of the Settlement Agreement, including frequently asked questions. Within twenty-four (24) hours after Class Counsel files a motion for an award of attorneys' fees, costs and service awards to Plaintiffs, that motion will also be displayed on the Settlement Website. The Settlement Website will allow Settlement Class Members to submit Claim Forms online.

4. CAFA Notice. The Claims Administrator shall prepare and serve timely Class Action Fairness Act notice within ten (10) calendar days after the filing of the motion for preliminary approval.

VIII. CLAIMS PROCESS

1. Claim Form. A Settlement Class Member must submit a Claim Form in order to make a claim, either by mail or online. Claim Forms submitted by mail must be post-marked by the last day of the Claim Period.

2. One Claim Form per Claimant. Each Settlement Class Member is entitled to make only a single claim.

3. Review of Claims. The Claims Administrator will review each claim that is submitted within the Claim Period. If the Claim Form is timely, sets forth the requisite information, is signed (by written or electronic signature), and is not duplicative of a previously approved Claim Form, then the Claim Administrator will approve the Claim Form. The Claims Administrator will provide updates on a monthly basis to and as requested by the Parties' counsel on the number of claims that are denied and approved. Any disputes over the validity of a Claim Form will be promptly presented to and resolved by the Court.

4. Issuance of Payment. The Claims Administrator will issue the settlement payment to each Settlement Class Member with an approved Claim Form within thirty (30) calendar days after the Effective Date.

IX. OPT-OUT PROCESS

1. Opt-Out Requirements. Individuals in the Settlement Class may exclude themselves from the Settlement Class by advising the Claims Administrator in writing no later than the Opt-Out Deadline. All such writings must be signed, and if mailed, must be postmarked no later than the Opt-Out Deadline. All persons in the Settlement Class will be bound by this Settlement and judgments of this Court in this Action unless they exclude themselves in writing by the Opt-Out Deadline.

2. Retention of Opt-Outs. The Claims Administrator will retain a copy of all opt-out requests and will provide copies to the Parties' counsel upon request. Class Counsel will keep such information strictly confidential and use it only for purposes of determining whether an individual in the Settlement Class has properly opted out.

X. OBJECTIONS

1. Right to Object. Any Settlement Class Member who desires to object to the fairness of this Settlement must file a written objection with the Court by the Objection Deadline. The written objection must provide the objector's name, address, telephone number at which the Calls were received, and the reason(s) for the objection.

2. Right to Appear at Final Approval Hearing. Anyone who properly objects, as described herein, may appear at the Final Approval Hearing, including through an attorney hired at the objector's expense. Such objectors or their attorneys intending to appear at the Final Approval Hearing must file a notice of appearance with the Court no later than ten (10) days before the Final Approval Hearing. Any member of the Settlement Class who fails to comply with the provisions herein shall waive and forfeit any and all rights to appear and/or object separately, and shall be bound by the terms of this Settlement and the orders and judgments of this Court.

XI. FINAL APPROVAL

1. Declaration of Notice by Claims Administrator. The Claims Administrator shall provide the Parties' counsel no later than fourteen (14) calendar days prior to the Final Approval Hearing with a declaration stating that the Notice required by this Settlement Agreement has been completed pursuant to the Preliminary Approval Order.

2. Motion for Final Approval Order. After completion of the Notice Plan and the expiration of the Opt-Out and Objection Deadlines, and no later than fourteen (14) calendar days prior to the Final Approval Hearing, Class Counsel shall move the Court to enter the Final Approval Order. Class Counsel shall file a memorandum addressing any valid objections, and Defendants' counsel may, but are not required to, file an additional memorandum in response. The Parties' responses addressing such objections shall be filed no later than fourteen (14) days prior to the Final Approval Hearing.

3. Final Approval Order. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants approval of this Settlement and:

- a. Finds that the notice under the Notice Plan satisfies the requirements of Due Process and Rule 23 of the Federal Rules of Civil Procedure;
- b. Finds that the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class Members;
- c. Finds that Plaintiffs and Class Counsel have adequately represented the Settlement Class Members;
- d. Finds that each Settlement Class Member shall be bound to this Settlement Agreement, including the release in Section XII;
- e. Approves this Settlement;
- f. Dismisses on the merits with prejudice all claims of the Settlement Class Members asserted in this Action;
- g. Permanently enjoins each Settlement Class Member from bringing, joining, or continuing to prosecute against the Released Parties any action involving the Released Claims; and
- h. Retains jurisdiction of all matters relating to the administration, implementation, interpretation, and enforcement of this Settlement.

XII. RELEASE OF CLAIMS

1. Release. As of the Effective Date, Plaintiffs and each Settlement Class Member, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, affiliates, successors, predecessors-in-interest, and assigns hereby release, resolve, relinquish, and discharge forever each of the Released Parties from each of the Released Claims as defined below.

2. Released Claims. Released Claims means claims based on violations of the cell phone provisions of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A) arising before the date the Final Approval Order is entered.

3. Covenant Not to Sue. Plaintiffs and each Settlement Class Member will be deemed to have agreed not to sue any Released Party with respect to any of the Released Claims, or otherwise assist others in doing so, and to have agreed to be forever barred from doing so.

XIII. TERMINATION OF AGREEMENT

1. The Parties' Right to Terminate Settlement. The Parties shall have the right to unilaterally terminate this Settlement Agreement by providing written notice of its election to do so to the other party within fourteen (14) calendar days of any of the following events:

- a. The Court rejects, materially changes or modifies, or declines preliminary or final approval of the Settlement Agreement;
- b. An Appellate Court reverses the Final Approval Order;
- c. The Effective Date does not occur;
- d. A party, its counsel or the Claims Administrator breaches the terms of this Settlement Agreement prior to the Effective Date; or
- e. Any other ground for termination provided elsewhere in this Agreement.

XIV. NO ADMISSION OF LIABILITY

1. Denial of Liability. Defendants deny any liability or wrongdoing of any kind in connection with the claims alleged in this Action. Nothing in this Settlement Agreement and all acts performed in furtherance of this Settlement Agreement shall constitute an admission by Defendants of wrongdoing or liability in this Action. Nothing in this Settlement Agreement and all acts performed in furtherance of this Settlement Agreement shall constitute an admission by Defendants of the truth of any factual allegations in this Action. While Defendants deny any liability, they have concluded that further litigating this Action would be expensive and waste the time and resources of the company. Thus, Defendants have concluded that it is desirable to fully and finally settle this Action.

2. Federal Rule of Evidence 408. Pursuant to Rule 408 of the Federal Rules of Evidence, this Settlement Agreement and any related documents filed or created in connection with this Settlement Agreement shall be inadmissible as evidence in any proceeding, except as necessary to approve, interpret, or enforce this Settlement Agreement.

XV. GENERAL PROVISIONS

1. Entire Agreement. This Settlement Agreement and its exhibits constitute the entire agreement between the Parties.

2. Jurisdiction. This Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including the Settlement Class Members, and the administration and enforcement of this Settlement Agreement.

3. No Construction Against Drafter. This Settlement Agreement will be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter will not apply.

4. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Settlement Agreement.

5. No Oral Modifications. This Settlement Agreement may not be amended or modified in any manner except by a writing signed by an authorized agent of Defendants and Class Counsel, and approved by the Court.

6. No Assignment. No party to this Settlement Agreement has heretofore assigned, transferred, or granted, or attempted to do so, any of the claims or causes of action disposed of by this Settlement Agreement.

7. Agreement Binding on Successors in Interest. This Settlement Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

8. Resolution of Disputes. Any disputes regarding the administration of this Settlement Agreement that the Parties cannot resolve between themselves will be decided by the Court.

9. Execution in Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

10. Notices. All notices to counsel provided herein shall be sent by electronic mail with a hard copy sent by overnight mail to:

As to Plaintiffs and the Settlement Class Members:

TERRELL MARSHALL LAW GROUP PLLC
Beth E. Terrell
Email: bterrell@terrellmarshall.com
Jennifer Rust Murray
Email: jmurray@terrellmarshall.com
Mary B. Reiten
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936 North 34th Street, Suite 300
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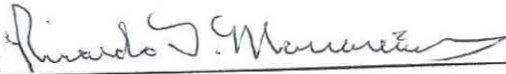
GALLAGHER LAW OFFICES P.S.
Daniel C. Gallagher
Email: dan@nwprolaw.com
10611 Battle Point Drive NE
Bainbridge Island, Washington 98110

As to Defendants:

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111 SW 5th Avenue, Suite 4300
Portland, Oregon 97204

AGREED TO AND ACCEPTED:

Dated: 8/5/16, 2016

By: 
Ricardo T. Mascarenas
*Individually and on behalf of the proposed
Settlement Class*

Dated: _____, 2016

By: _____
Christopher Gregory
*Individually and on behalf of the proposed
Settlement Class*

GALLAGHER LAW OFFICES, P.S.
*Attorneys for Plaintiffs and proposed Plaintiff
Settlement Class*

Dated: _____, 2016

By: _____
Daniel C. Gallagher, WSBA #21940
Email: dan@nwprolaw.com
10611 Battle Point Drive NE
Bainbridge Island, WA 98199
Telephone: (206) 855-9310
Facsimile: (206) 855-2878

TERRELL MARSHALL LAW GROUP PLLC
*Attorneys for Plaintiffs and proposed Plaintiff
Settlement Class*

Dated: _____, 2016


By: _____
Beth E. Terrell, WSBA #26759
Jennifer Rust Murray, WSBA #36983
Mary Reiten, WSBA #33623
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

AGREED TO AND ACCEPTED:

Dated: _____, 2016

By: _____
Ricardo T. Mascarenas
*Individually and on behalf of the proposed
Settlement Class*

Dated: Aug 5th, 2016

By: 
Christopher Gregory
*Individually and on behalf of the proposed
Settlement Class*

GALLAGHER LAW OFFICES, P.S.
*Attorneys for Plaintiffs and proposed Plaintiff
Settlement Class*

Dated: _____, 2016

By: _____
Daniel C. Gallagher, WSBA #21940
Email: dan@nwprolaw.com
10611 Battle Point Drive NE
Bainbridge Island, WA 98199
Telephone: (206) 855-9310
Facsimile: (206) 855-2878

TERRELL MARSHALL LAW GROUP PLLC
*Attorneys for Plaintiffs and proposed Plaintiff
Settlement Class*

Dated: August 8th, 2016

By: 
Beth E. Terrell, WSBA #26759
Jennifer Rust Murray, WSBA #36983
Mary Reiten, WSBA #33623
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Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

SMITH FREED & EBERHART P.C.
Attorneys for Defendants

Dated: _____, 2016

By: _____

Anne Cohen, WSBA #41183
Email: acohen@smithfreed.com
Joseph A. Rohner IV, WSBA#47117
Email: jrohner@smithfreed.com
111 SW 5th Avenue, Suite 4300
Portland, Oregon 97204
Telephone: (503) 227-2424
Facsimile: (503) 227-2535

APPSTACK, INC.
Defendant

Dated: August 22nd, 2016

By:  _____

Anne Cohen, WSBA #41183

Its: *On behalf of Appstack, Inc., as its
attorney of record, with approval of its
insurer, Nationwide Insurance Company*

Steve Espinosa
Defendant

Dated: _____, 2016

By: _____

John Zdanowski
Defendant

Dated: _____, 2016

By: _____

SMITH FREED & EBERHART P.C.
Attorneys for Defendants

Dated: _____, 2016

By: _____

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Facsimile: (503) 227-2535

APPSTACK, INC.
Defendant

Dated: _____, 2016

By: _____

Its: _____

Steve Espinosa
Defendant

Dated: _____, 2016

By:  _____

John Zdanowski
Defendant

Dated: _____, 2016

By: _____

SMITH FREED & EBERHART P.C.
Attorneys for Defendants

Dated: _____, 2016

By: _____

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Telephone: (503) 227-2424
Facsimile: (503) 227-2535

APPSTACK, INC.
Defendant

Dated: _____, 2016

By: _____

Its: _____

Steve Espinosa
Defendant

Dated: _____, 2016

By: _____

John Zdanowski
Defendant

Dated: _____, 2016

By:  _____

Appstack Settlement Claims Administrator

P.O. Box XXX
City, State Zip Code

XXX

«Barcode»

Postal Service: Please do not mark barcode

Claim#: XXX-«ClaimID»-«State»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

Name/Address Changes (if any):	
First Name _____	Last Name _____
Address _____	
City _____	State _____ Zip _____
Home phone: (_____) _____	
Alternate phone: (_____) _____	
E-Mail Address: _____	

Toll Free Number: 1-XXX-XXX-XXXX

Website: www.XXX.com

Deadline to File a Claim: Month XX, XXXX

Objection/Exclusion Deadline: Month XX, XXXX

Settlement Fairness Hearing: Month XX, XXXX

Appstack Settlement Claim Form

To make a claim, Settlement Class Members must complete and submit a claim by **Month XX, XXXX**. You may also complete your Claim Form online at www.XXX.com, please have your unique identifier ready.

Part I: Claimant Identification

First Name Last Name

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City State Zip Code

Foreign Country (only if not USA)

(_____) _____
Optional Telephone Number (Home)

Complete Other Side

■ *XXX«ClaimID»*

«ClaimID»

XXXPOC001





Part II: Claim

Unique Identifier

Please enter the 10 digit unique identifier published in the postcard notice or email notice that you received. If you did not receive a notice, or cannot locate the 10 digit unique identifier, you may leave this field blank.

Phone number at which you received calls from Appstack:

(_____) _____

Part III: Certification:

By submitting this Claim Form, I certify that the foregoing information supplied by the undersigned is true and correct.

Signature of Claimant

Print Name of Claimant

Date (MMDDYY)

Submit your Claim Form:

By Mail:

Appstack Settlement Claims Administrator
P.O. Box XXX
City, State Zip Code

Online:

www.XXX.com



1 THE HONORABLE JAMES L. ROBERT

2
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5
6 U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

7
8 MONTY J. BOOTH, ATTORNEY AT LAW,
9 P.S., a Washington corporation, RICARDO T.
10 MASCARENAS, a Washington resident, and
11 CHRISTOPHER GREGORY, a Washington
resident, individually and on behalf of all others
similarly situated,

NO. 2:13-cv-01533-JLR

**[PROPOSED] FINAL ORDER OF
JUDGMENT AND DISMISSAL WITH
PREJUDICE**

12 Plaintiffs,

13 vs.

14 APPSTACK, INC., a Delaware corporation;
15 STEVE ESPINOSA, individually; and JOHN
ZDANOWSKI, individually,

16 Defendants.

17
18 This matter came before the Court upon consideration of Plaintiffs’ Motion for Final
19 Approval of Class Action Settlement and Class Counsel’s Motion for an Award of Fees, Costs,
20 and Class Representative Service Awards. After considering the motions and the declarations
21 and exhibits submitted with the motions, the Court enters this Final Order of Judgment and
22 Dismissal with Prejudice, which constitutes a final adjudication on the merits of all claims of
23 the Settlement Class. It is **HEREBY ORDERED** that the motions are **GRANTED**, the
24 Settlement Class is certified, the Settlement Agreement and Release of Claims (“Agreement”)¹
25 is approved, Class Counsel are awarded \$ [REDACTED] in fees and \$ [REDACTED] in costs, and service awards in
26

27 ¹ Capitalized terms shall have the meaning ascribed to them in the Agreement.

1 the amount of \$ [REDACTED] each are approved for Plaintiffs Ricardo T. Mascarenas and Christopher
2 Gregory.

3 **WHEREAS**, on or about August 22, 2016, the Parties filed the Agreement (Docket No.
4 [REDACTED]) which sets for the terms and conditions of the settlement and release of certain claims
5 against Defendants Appstack, Inc., John Zdanowski, Steve Espinosa, and the Released Parties
6 (“Settlement”);

7 **WHEREAS**, Plaintiffs and Class Counsel have filed motions, pursuant to Rule 23 of
8 the Federal Rules of Civil Procedure, for orders finally approving the Agreement, which will
9 dismiss this Action with prejudice, and granting Class Counsel’s request for an award of fees,
10 costs, and service awards to the Plaintiffs;

11 **WHEREAS**, the Court preliminary approved the Settlement on [REDACTED], and Class Notice
12 was given to all Settlement Class Members pursuant to that Preliminary Approval Order;

13 **WHEREAS**, the Court has reviewed and considered all papers filed in support of and
14 in opposition to the Settlement, and all exhibits thereto, and has held a hearing after Class
15 Notice to the Settlement Class in order to confirm that the Settlement is fair, reasonable, and
16 adequate, and to determine whether the Settlement Order and Final Judgment should be entered
17 in this Action pursuant to the terms and conditions set forth in the Agreement (“Final Approval
18 Hearing”) on [REDACTED], at which time the Parties and all interested persons were heard in support
19 of and in opposition to the Settlement; and

20 **WHEREAS**, upon consideration of all of the above, the Court finds that the Settlement
21 is fair, adequate, and reasonable to the Settlement Class, within the authority of the parties, and
22 the result of extensive arm’s length negotiations with the guidance of an experienced mediator.

23 **THEREFORE**, the following is **HEREBY ORDERED**:

24 1. This Court has jurisdiction over the subject matter of this Action and personal
25 jurisdiction over the Parties and the Settlement Class.

1 2. The definitions and provisions of the Agreement are incorporated in this Order
2 as though fully set forth herein.

3 3. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for the
4 purposes of Settlement only, the Settlement Class is certified as follows:

5
6 All persons or entities in the United States who, on or after four
7 years before the filing of this action to July 21, 2016, received a
8 call to their cellular telephone line with a pre-recorded message,
9 made by or on behalf of Defendants.

10 4. For purposes of settlement, Plaintiffs are hereby appointed “Class
11 Representatives.”

12 5. For purposes of settlement, the attorneys at Terrell Marshall Law Group PLLC
13 and Gallagher Law Offices, P.S., are hereby appointed as Class Counsel.

14 6. In the event that the Settlement terminates for any reason, the certification of the
15 Settlement Class shall be automatically vacated, null and void, and this Action shall revert to its
16 status immediately prior to the execution of the Agreement.

17 7. This Court finds that the Class Notice given to members of the Settlement Class
18 pursuant to the terms of the Agreement fully and accurately informed such members of all
19 material elements of this settlement and constituted valid, sufficient, and due notice to all such
20 members. The Class Notice fully complied with due process, Rule 23 of the Federal Rules of
21 Civil Procedure, and with all other applicable law. Accordingly, this Court makes final the
22 conditional certification set forth in the Preliminary Approval Order.

23 8. Settlement Class Members who timely submitted valid requests for exclusion
24 are excluded from the Settlement Class and are not bound by this Order and Judgment.

25 Attached hereto as Exhibit A is a list of all Settlement Class Members who opted out of the
26 Settlement Class.
27

1 9. The Court finally approves this Settlement, and finds that it is fair, reasonable,
2 and adequate.

3 10. The Parties, their counsel, and the Claims Administrator shall fulfill their
4 obligations and duties under the Agreement.

5 11. The Court dismisses with prejudice this Action, the Released Claims, and the
6 Released Parties, and adjudges that the Released Claims are released against the Released
7 Parties.

8 12. The Court adjudges that Plaintiffs and the Settlement Class Members are
9 deemed to have fully, finally, completely, and forever released, relinquished, and discharged
10 the Released Claims against the Released Parties.

11 13. Plaintiffs and the Settlement Class Members are permanently enjoined and
12 barred from asserting, initiating, prosecuting, or continuing any of the Released Claims against
13 the Released Parties.

14 14. The Claims Administrator completed the delivery of Class Notice according to
15 the terms of the Agreement. The Class Notice given by the Claims Administrator to the
16 Settlement Class, which set forth the principal terms of the Agreement and other matters, was
17 the best practicable notice under the circumstances. The notice program prescribed by the
18 Agreement was reasonable and provided due and adequate notice of these proceedings and of
19 the matters set forth therein, including the terms of the Agreement, to all parties entitled to such
20 Class Notice. The Class Notice given to members of the Class satisfied the requirements of
21 Federal Rule of Civil Procedure 23 and the requirements of constitutional due process. The
22 Class Notice was reasonably calculated under the circumstances to apprise Settlement Class
23 Members of the pendency of this Action, all material elements of the settlement, and their
24 opportunity to exclude themselves from, object to, or comment on the settlement and appear at
25 the final fairness hearing. The Court has afforded a full opportunity to all Settlement Class
26 Members to be heard. Accordingly, the Court determines that all members of the Settlement
27

1 Class, except those who timely excluded themselves from the Settlement Class, are bound by
2 this Judgment and Final Order.

3 16. Within ten (10) days after the filing of the proposed Agreement in this Court, a
4 notice of the proposed Settlement was served upon the appropriate state official of each State in
5 which a Settlement Class Member resides and upon the Attorney General of the United States.
6 The Court finds that the Class Notice provided satisfied the requirements of 28 U.S.C.
7 § 1715(b) and that more than ninety (90) days have elapsed since the required Class Notice was
8 provided, as required by 28 U.S.C. § 1715(d).

9 17. The Court approves payment of attorneys' fees and costs to Class Counsel in the
10 amount of \$ [REDACTED] in fees and \$ [REDACTED] in out-of-pocket litigation costs. These amounts shall be
11 paid from the Settlement Fund pursuant to the terms of the Agreement. The Court finds these
12 amounts to be appropriate and reasonable in light of the work performed by Class Counsel and
13 the benefits obtained by the Settlement Class Members. In addition, the Court finds that the
14 Agreement was negotiated at arms' length and without collusion.

15 18. The Court approves payment of service awards to Plaintiffs in the amount of
16 \$2,500 each to the Plaintiffs. This amount shall be paid from the Settlement Fund pursuant to
17 the terms of the Agreement.

18 19. Neither this Final Judgment nor the Agreement is an admission or concession by
19 Defendants of the validity of any claims or of any liability or wrongdoing or of any violation of
20 law. This Final Judgment and the Agreement do not constitute a concession and shall not be
21 used as an admission or indication of any wrongdoing, fault or omission by Defendants or any
22 other person in connection with any transaction, event or occurrence, and neither this Final
23 Judgment nor the Agreement nor any related documents in this proceeding, nor any reports or
24 accounts thereof, shall be offered or received in evidence in any civil, criminal, or
25 administrative action or proceeding, other than such proceedings as may be necessary to
26 consummate or enforce this Final Judgment, the Agreement, and all releases given thereunder,
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1 or to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit
2 of claims released in the Agreement. This Settlement Order and Final Judgment also does not
3 constitute any opinion or position of this Court as to the merits of the claims and defenses
4 related to this Action.

5 20. If Final Approval does not occur, the parties shall be returned to the status quo
6 ex ante, for all litigation purposes, as if no settlement had been negotiated or entered into and
7 thus this Settlement Order and Final Judgment and all other findings or stipulations regarding
8 the Settlement shall be automatically void, vacated, and treated as if never filed.

9 21. This Court retains jurisdiction to consider all further matters arising out of or
10 connected with the Settlement, including the implementation and enforcement of the
11 Agreement.

12 22. There were [REDACTED] objections to the settlement. They are all overruled. Thus, the
13 Court finds that no justifiable reason exists for delaying entry of this Settlement Order and
14 Final Judgment.

15 **THEREFORE**, the Clerk of the Court is **HEREBY ORDERED** to enter this
16 Settlement Order and Final Judgment.

17 IT IS HEREBY ORDERED.

18 DATED this _____ day of _____, 2016.

19
20
21 _____
22 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

1
2 I, Beth E. Terrell, hereby certify that on August 4, 2016, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system which will send notification of
4 such filing to the following:

5 Anne Cohen, WSBA #41183
6 Email: acohen@smithfreed.com
7 Joseph A. Rohner IV, WSBA#47117
8 Email: jrohner@smithfreed.com
9 Legal Assistant: Sandra Reust
10 Email: sandra@smithfreed.com
11 Legal Assistant: Kimberly Harmon
12 Email: kharmon@smithfreed.com
13 SMITH FREED & EBERHARD, P.C.
14 111 SW 5th Avenue, Suite 4300
15 Portland, Oregon 97204
16 Telephone: (503) 227-2424
17 Facsimile: (503) 227-2535

18 *Attorneys for Defendants*

19 DATED this 4th day of August, 2016.

20 TERRELL MARSHALL LAW GROUP PLLC

21 By: /s/ Beth E. Terrell, WSBA #26759
22 Beth E. Terrell, WSBA #26759
23 Email: bterrell@terrellmarshall.com
24 936 North 34th Street, Suite 300
25 Seattle, Washington 98103
26 Telephone: (206) 816-6603
27 Facsimile: (206) 319-5450

Attorney for Plaintiffs

A COURT AUTHORIZED
THIS LEGAL NOTICE

**If you received prerecorded
telephone messages on your
cellular telephone from
Appstack, you may be entitled
to benefits under a class action
settlement.**

A settlement has been reached in a class action lawsuit, *Booth, et al. v. Appstack, Inc., et al.*, No. 2:13-cv-01533-JLR (U.S. District Court W.D. Wash.), where Plaintiffs allege that Appstack, Inc., Steve Espinosa, and John Zdanowski (“Appstack”) caused prerecorded telephone calls to be placed to cell phones on its behalf. Appstack denies any wrongdoing, has asserted defenses, and in agreeing to settle, does not admit any wrongdoing.

XXX

Appstack Settlement Claims Administrator
P.O. Box XXX
City, State Zip Code

«Barcode»

Postal Service: Please do not mark barcode

Claim#: XXX-«ClaimID»-«MailRec»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

WHO IS A CLASS MEMBER?

You may be in the Settlement Class if, on or after August 27, 2009, you received a call to your cellular telephone line with a prerecorded message made by or on behalf of Appstack.

SETTLEMENT TERMS

Appstack will pay \$975,000 into a fund that will cover: (1) cash payments to eligible Settlement Class Members who submit claim forms; (2) attorneys' fees and costs to Class Counsel not to exceed \$243,750 as approved by the Court; (3) court-approved service awards of \$2,500 each (\$5,000 total) to the class representatives; and (4) the costs of administering the settlement. Your share of the fund will depend on the number of claims made. However, Class Counsel estimates you will receive approximately **\$40-60**. The \$975,000 will be divided among Settlement Class Members who file timely, valid claims after deducting settlement expenses, service awards, and attorneys' fees and costs.

YOUR RIGHTS AND OPTIONS

Submit a Claim Form. To receive a cash award, you may submit a Claim Form on the Settlement Website: www.XXX.com. You also may download and mail in your Claim Form to the Claims Administrator at **Appstack Settlement Claims Administrator, P.O. Box XXX, City, State Zip Code**. You also may request a Claim Form by calling **1-XXX-XXX-XXXX**. Settlement Class Members may only submit one claim.

Opt Out. You may also exclude yourself from the lawsuit and keep your right to sue Appstack on your own by sending a written request for exclusion to the Claims Administrator by **Month XX, XXXX**. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue regarding the settled claims. Please see the Settlement Website for more details.

Object. If you do not exclude yourself, you have the right to comment or object to the proposed settlement. Written objections must be signed, postmarked by **Month XX, XXXX**, and provide the reasons for the objection. Please see the Settlement Website for more details.

Do Nothing. If you do nothing, you will not receive any payment and will lose the right to sue regarding any issues relating to this action. You will be considered part of the Settlement Class, and you will be bound by the Court's decisions.

Attend the Final Approval Hearing. The Court has set a hearing to decide whether the settlement should be approved on **Month XX, XXXX** at **XX:00 a.m.** at the United States District Court for the Western District of Washington, located at 700 Stewart Street, Suite 14106, Seattle, WA 98101. All persons who timely object to the settlement by **Month XX, XXXX** may ask to appear at the Final Approval Hearing. The Court will also consider Class Counsel's fee request, which will be posted on the Settlement website on **Month XX, XXXX**. Class Counsel is seeking a payment of up to \$243,750, which amounts to 25% of the total \$975,000 fund.

**This Notice is only a summary. Details about the settlement can be found on the website: www.XXX.com.
Please do not contact the Court.**

1 THE HONORABLE JAMES L. ROBART

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6 U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

7
8 MONTY J. BOOTH, ATTORNEY AT LAW,
9 P.S., a Washington corporation, RICARDO T.
10 MASCARENAS, a Washington resident, and
11 CHRISTOPHER GREGORY, a Washington
12 resident, individually and on behalf of all others
13 similarly situated,

14 Plaintiffs,

15 vs.

16 APPSTACK, INC., a Delaware corporation;
17 STEVE ESPINOSA, individually; and JOHN
18 ZDANOWSKI, individually,

19 Defendants.

NO. 2:13-cv-01533-JLR

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

20 WHEREAS, on or about August 1, 2016, the Parties entered into a Settlement
21 Agreement and Release (“Agreement”), which sets forth the terms and conditions of the
22 settlement and release of certain claims against Defendants Appstack, Inc., Steve Espinosa, and
23 John Zdanowski (collectively “Defendants”); the Court having reviewed and considered the
24 Agreement and all of the filings, records, and other submissions; the Court finds upon a
25 preliminary examination that the Agreement appears fair, reasonable, and adequate, and that a
26 hearing should and will be held after notice to the Settlement Class in order to confirm that the
27 settlement is fair, reasonable, and adequate, and to determine whether the Settlement Order and

1 Final Judgment should be entered in this Action pursuant to the terms and conditions set forth
2 in the Agreement (“Final Approval Hearing”).

3 **THEREFORE, THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

4 1. This Court has jurisdiction over the subject matter of this Action and personal
5 jurisdiction over the Parties and the Settlement Class.

6 2. The Court finds that (a) the Agreement resulted from arm’s-length negotiations,
7 with participation of an experienced mediator, and (b) the Agreement is sufficient to warrant
8 notice of the Settlement and the Final Approval Hearing to the members of the Settlement
9 Class.

10 3. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for the
11 purposes of settlement only, the Settlement Class is preliminarily certified as follows:

12 All persons or entities in the United States who, on or after four
13 years before the filing of this action to July 21, 2016, received a
14 call to their cellular telephone line with a pre-recorded message,
made by or on behalf of Defendants.

15 The Settlement Class does not include any persons who validly request exclusion from
16 the Class.

17 4. For purposes of settlement only, the Court hereby appoints Plaintiffs Ricardo T.
18 Mascarenas and Christopher Gregory as “Class Representatives” pursuant to Rule 23 of the
19 Federal Rules of Civil Procedure, and finds that, for settlement purposes only, these Class
20 Representatives have and will fairly and adequately protect the interests of the Settlement
21 Class.

22 5. For purposes of settlement only, the Court appoints the attorneys at Terrell
23 Marshall Law Group and Gallagher Law Offices, P.S. as Class Counsel and finds that Class
24 Counsel have and will fairly and adequately protect the interests of the Settlement Class.

1 6. The Court preliminarily finds that the Agreement is fundamentally fair,
2 adequate, and reasonable, and that the Settlement Class satisfies the requirements of Rule 23 of
3 the Federal Rules of Civil Procedure as follows:

4 a. The number of members in the Settlement Class appears to be so
5 numerous that joinder of all members is impracticable;

6 b. There appear to be common questions of law and fact;

7 c. The claims of the Class Representatives appear to be typical of the
8 claims of the Settlement Class;

9 d. The Class Representatives and Class Counsel appear to be able to fairly
10 and adequately represent and protect the interests of the Settlement Class;

11 e. The questions of law and fact common to the members of the Settlement
12 Class appear to predominate over individual questions of law and fact; and

13 f. A class action settlement appears to be superior to other methods of
14 adjudication.

15 7. The Court appoints Epiq Systems, Inc. as the Claims Administrator, who shall
16 fulfill the functions, duties, and responsibilities of the Claims Administrator as set forth in the
17 Agreement and this Order.

18 8. The Court approves the proposed forms of notice and notice plan for giving
19 direct notice to the Settlement Class by U.S. Mail as set forth in the Agreement and its attached
20 exhibits (“Notice Plan”). The Notice Plan, in form, method, and content, fully complies with
21 the requirements of Rule 23 and due process, constitutes the best notice practicable under the
22 circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds
23 that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the
24 persons in the Settlement Class of the pendency of this action, the terms of the Agreement, the
25 right to object to the settlement and to exclude themselves from the Settlement Class, and the
26 process for submitting a claim for monetary relief.

1 9. Pursuant to the Agreement, the Claims Administrator shall provide individual
2 notice via U.S. Mail to the most recent mailing address of the Settlement Class no later than
3 , which is thirty (30) days following entry of this Order.

4 10. Members of the Settlement Class may exclude themselves from the Settlement
5 Class by advising the Claims Administrator in writing no later than (“Opt-Out Deadline”),
6 which is sixty (60) days after the date notice is sent to the Settlement Class. All such writings
7 must be signed, and if mailed, must be postmarked no later than the Opt-Out Deadline.

8 11. Any Settlement Class Member who desires to object to the fairness of this
9 settlement must file a written objection with the Court by (“Objection Deadline”), which
10 is sixty (60) days from the date notice is mailed to the Settlement Class. The objection must
11 provide the objector’s name, address, telephone number at which the calls were received, and
12 the reason(s) for the objection.

13 12. Anyone who properly objects, as described herein, may appear at the Final
14 Approval Hearing, including through an attorney hired at the objector’s expense. Such
15 objectors or their attorneys intending to appear at the Final Approval Hearing must file a notice
16 of appearance with this Court no later than ten (10) days prior to the Final Approval Hearing.
17 Any member of the Settlement Class who fails to comply with this provision shall waive and
18 forfeit any and all rights to appear and/or object separately, and shall be bound by the terms of
19 this settlement and the orders and judgments of this Court. Class Counsel shall file responses
20 to any valid objections no later than fourteen (14) days prior to the Final Approval Hearing.
21 Defendants’ counsel also may file responses, but no later than fourteen (14) days prior to the
22 Final Approval Hearing.

23 13. The Court approves the claims procedures set forth in the Agreement. The
24 Court approves the form and content of the Claim Form substantially in the form attached as
25 Exhibit to the Agreement. A properly executed Claim Form must be submitted as required
26 in the Notice over the Internet or postmarked by a date specified in the Class Notice.
27

1 14. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure a hearing will be
2 held before this Court to finally determine whether the prerequisites for class certification and
3 treatment under Rule 23(a) and (b) of the Federal Rules of Civil Procedure are met; to
4 determine whether the settlement is fair, reasonable, and adequate, and should be approved by
5 this Court; to determine whether the Settlement Order and Final Judgment under this settlement
6 should be entered; to consider the application for attorneys' fees and expenses of Class
7 Counsel; to consider the application for service awards to the class representatives; to consider
8 the distribution of the Settlement Fund pursuant to the Agreement; and to rule on any other
9 matters that the Court may deem appropriate. At the Final Approval Hearing, the Court may
10 enter the Settlement Order and Final Judgment in accordance with the Agreement that will
11 adjudicate the rights of the Settlement Class Members.

12 15. The Final Approval Hearing is scheduled for .

13 16. All memoranda and other submissions in support of the Settlement shall be filed
14 no later than fourteen (14) days prior to the Final Approval Hearing, including proof of
15 compliance with the notice provisions of the Class Action Fairness Act of 2005 ("CAFA"), 28
16 U.S.C. § 1715.

17 17. All notice and Settlement Administration expenses shall be paid from the
18 Settlement Fund pursuant to the Agreement.

19 18. On or before thirty (30) days after the Notice Date, Class Counsel shall file and
20 serve an application for an award of attorneys' fees and out-of-pocket costs, and an application
21 for service awards to Plaintiffs. The application shall be posted on the Settlement Website
22 within twenty-four hours after the day it is filed.

23 19. On or before fourteen (14) days prior to the Final Approval Hearing, Class
24 Counsel shall file and serve a motion for final approval and responses to any objections.

25 20. All members of the Settlement Class will be bound by all orders pertaining to
26 the settlement unless such persons request exclusion from the Settlement Class. Members of
27

1 the Settlement Class who do not timely and validly request exclusion shall be so bound, even if
2 they have previously or subsequently initiated individual litigation or other proceedings against
3 the Released Parties relating to the Release Claims.

4 21. Settlement Class Members do not need to appear at the Final Approval Hearing
5 or take any other action to indicate their approval and partake in this settlement.

6 22. This Order and the settlement are not admissions or concessions by Defendants
7 of any liability or wrongdoing. This Order is not a determination of liability or wrongdoing.
8 This Order also does not constitute any opinion or position of this Court as to the merits of the
9 claims and defenses related to this Action.

10 23. This Action is stayed until further ordered by this Court, except such actions and
11 proceedings that may be necessary to implement this Settlement and issue a Final Approval
12 Order and Judgment.

13 24. Pending final determination of whether the settlement should be approved,
14 Plaintiffs, all Settlement Class Members and any person or entity allegedly acting on behalf of
15 Settlement Class Members, either directly, representatively or in any other capacity, are
16 preliminarily enjoined from commencing or prosecuting against the Released Parties any action
17 or proceeding in any court or tribunal asserting any of the Released Claims, provided, however,
18 that this injunction shall not apply to individual claims of any Settlement Class Members who
19 timely exclude themselves in a manner that complies with this Order. This injunction is
20 necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and
21 authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in
22 aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

23 25. If Final Approval does not occur, the parties shall be returned to the status quo
24 ex ante, for all litigation purposes, as if no settlement had been negotiated or entered into and
25 thus this Order and all other findings or stipulations regarding the settlement, including but not
26
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1 limited to, certification of the Settlement Class shall be automatically void, vacated, and treated
2 as if never filed.

3 26. Counsel for the parties are hereby authorized to utilize all reasonable procedures
4 in connection with the administration of the settlement which are not materially inconsistent
5 with either this Order or the terms of the Settlement Agreement.

6 27. This Court retains jurisdiction to consider all further matters arising out of or
7 connected with the settlement. The Court reserves the right to adjourn or continue the date of
8 the Final Approval Hearing without further notice to Settlement Class Members, and retains
9 jurisdiction to consider all further applications arising out of or connected with the settlement.
10 The Court may approve or modify the settlement without further notice to Settlement Class
11 Members.

12 28. The following timeline will govern proceedings through the Final Approval
13 Hearing:

14 Ten days after entry of this Order	Deadline to serve CAFA Notice
15 Thirty days after entry of this Order	Deadline to mail notice
16 Seven days after entry of this Order	Deadline to make the Settlement Website 17 available
18 Sixty days after entry of this Order	Deadline for Class Counsel to file fee petition and request for service awards
19 Ninety days after entry of this Order	Deadline for Settlement Class Members to 20 submit claims, exclusion requests, and 21 objections
22 Fourteen days before Final Approval Hearing	Deadline to file responses to objections and motion for final approval
23 At the court's convenience but no earlier 24 than 120 days after entry of this order	Final Approval Hearing

25
26 IT IS HEREBY ORDERED.
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DATED this ____ day of _____, 2016.

UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

1
2 I, Beth E. Terrell, hereby certify that on August 4, 2016, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system which will send notification of
4 such filing to the following:

5 Anne Cohen, WSBA #41183
6 Email: acohen@smithfreed.com
7 Joseph A. Rohner IV, WSBA#47117
8 Email: jrohner@smithfreed.com
9 Legal Assistant: Sandra Reust
10 Email: sandra@smithfreed.com
11 Legal Assistant: Kimberly Harmon
12 Email: kharmon@smithfreed.com
13 SMITH FREED & EBERHARD, P.C.
14 111 SW 5th Avenue, Suite 4300
15 Portland, Oregon 97204
16 Telephone: (503) 227-2424
17 Facsimile: (503) 227-2535

18 *Attorneys for Defendants*

19 DATED this 4th day of August, 2016.

20 TERRELL MARSHALL LAW GROUP PLLC

21 By: /s/ Beth E. Terrell, WSBA #26759
22 Beth E. Terrell, WSBA #26759
23 Email: bterrell@terrellmarshall.com
24 936 North 34th Street, Suite 300
25 Seattle, Washington 98103
26 Telephone: (206) 816-6603
27 Facsimile: (206) 319-5450

Attorney for Plaintiffs

Booth, et al. v. Appstack, Inc., et al.

Case No. 2:13-cv-01533-JLR

If pre-recorded telephone calls were directed to your cellular telephone, you could get a payment from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- Appstack, Inc., Steve Espinosa, and John Zdanowski (collectively “Appstack”) have agreed to pay \$975,000 into a fund from which eligible persons or entities who file claims will receive cash awards, estimated to be approximately \$ [REDACTED] per claim.
- The settlement resolves a lawsuit involving allegations that Appstack, or an entity on Appstack’s behalf, called people on or after August 27, 2009 on their cellular telephone lines using a pre-recorded voice.
- Court-appointed lawyers for the class (“Class Counsel”) will ask the Court for up to \$243,750 of the fund as fees and to reimburse them for the out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement.
- Appstack denies all allegations of wrongdoing in the lawsuit. As part of the proposed settlement, Appstack does not admit to any wrongdoing and continues to deny the allegations against it.
- The two sides disagree on whether Plaintiffs and the class could have won at trial.
- Your legal rights are affected whether you act, or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY DATE	This is the only way to receive a payment.
EXCLUDE YOURSELF BY DATE	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Appstack about the legal claims in this case.
OBJECT BY DATE	Write to the Court explaining why you don’t like the settlement.
ATTEND A HEARING ON DATE	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights.

BASIC INFORMATION

1. What is this Notice and why should I read it?

The purpose of this Notice is to let you know that a proposed settlement has been reached in the class action lawsuit entitled *Booth, et al. v. Appstack, Inc., et al.*, Case No. 2:13-cv-01533-JLR. You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

2. What is this lawsuit about?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are a class, or class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

Here, the class representatives claim that, on or after August 27, 2009, Appstack violated the Telephone Consumer Protection Act (“TCPA”) by making calls to cellular telephones with a pre-recorded message. The class representatives claim that Appstack did not have the recipients’ permission to make these calls.

The Court certified two classes, a WADAD Class and a TCPA Class. The Court decertified the WADAD Class, leaving only the TCPA Class for trial (the “Settlement Class”). U.S. District Court Judge James L. Robart (the “Court”) is in charge of this class action.

Appstack denies that it did anything wrong.

THE SETTLEMENT

3. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Appstack. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The class representatives and their attorneys think the settlement is best for the settlement class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am a part of the settlement?

You are in the “Settlement Class” if, on or after August 27, 2009, you received a call to your cellular telephone line with a pre-recorded message made by or on behalf of Appstack.

The Settlement Class does *not* include Appstack, any entity that has a controlling interest in Appstack, and Appstack’s current or former directors, officers, counsel, and their immediate families. The Settlement Class also does not include any persons who validly request exclusion from the Settlement Class, as described under Question 10. A person who does not exclude him or herself is a “Settlement Class Member.”

If you have questions about whether you are part of the Settlement Class, you may call 1-XXX-XXX-XXXX or visit www.XXX.com for more information.

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

Appstack has agreed to pay \$975,000 to be divided among all Settlement Class Members who send in a valid Claim Form after any fees, costs, service awards, and settlement administration expenses have been deducted.

Defendants Steve Espinosa and John Zdanowski (“Individual Defendants”) also have agreed, to the extent they authorize or direct telemarketing activities in the future, to exert reasonable efforts to ensure that they (a) establish written policies and procedures for TCPA compliance; (b) conduct annual training sessions directed to TCPA compliance; (c) maintain a list of telephone numbers of persons who request not to be contacted; (d) subscribe to a version of the National Do-Not-Call Registry obtained no more than three months prior to the date any call is made (with records documenting such compliance); (e) establish internal processes to ensure that they do not sell, rent, lease, purchase, or use the National Do-Not-Call database in any manner except in compliance with TCPA regulations; (f) scrub for cellular telephones before making calls using an automated telephone dialing system or pre-recorded voice; (g) shall not call cellular telephones prior to receipt of the express written permission of the intended recipient; and (h) maintain records demonstrating that recipients have provided such express written permission to received autodialed calls to their cellular telephones.

6. How much will my payment be?

Your share of the settlement will depend on the number of Claim Forms that Settlement Class Members submit. Class Counsel estimate you will receive approximately \$_____ per claim, but this is only an estimate.

HOW YOU GET A PAYMENT—SUBMITTING A CLAIM FORM

7. How do I make a claim?

To qualify for payment, you must submit a Claim Form by MONTH, DAY, 201__. You may submit a Claim Form online by going to the Settlement Website at www.XXX.com and following directions. You also may download a paper Claim Form on the Settlement Website or call the Claims Administrator at XXX-XXX-XXXX. Claim Forms sent by mail must be postmarked by MONTH, DAY, 201__ and mailed to:

Appstack Settlement
c/o Claims Administrator
P.O. Box. XXX
City, State Zip Code

8. When will I get my payment?

The Court will hold a hearing on [Final Approval Hearing Date] to decide whether to approve the settlement. If the settlement is approved, appeals may still follow. It is always uncertain whether these appeals can be resolved, and resolving them can take more than a year. Please be patient.

9. What am I giving up to get a payment or stay in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. That means you can't sue, continue to sue, or be part of any other lawsuit against Appstack regarding the TCPA claims that are subject to the settlement. If the settlement is approved and becomes final and not subject to appeal, then you and all Class Members release all "Released Claims" against all "Released Parties." It also means that all of the Court's order will apply to you and legally bind you.

The Settlement Agreement (available at www.XXX.com) describes the claims you are releasing (the "Released Claims") and against who you are releasing claims ("Released Parties") in detail, so read it carefully. To summarize, the release includes TCPA claims that arise out of the improper use of an "automatic telephone dialing system" and/or an "artificial or pre-recorded voice" to make telephone calls to cellular phones without consent on Appstack's behalf.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue Appstack, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself—or is sometimes referred to as "opting out" of the Settlement Class.

10. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter saying that you want to be excluded from the *Booth v. Appstack* settlement. You must sign the letter and include the following statement: "I request to be excluded from the settlement in the Appstack action." Please be sure to include your name, address, telephone number, and signature. You must mail your exclusion request postmarked no later than **DATE** to the following address:

Appstack Settlement
c/o **Claims Administrator**
P.O. Box 0000
City, ST 00000-0000

You cannot exclude yourself on the phone or by fax or email. If you ask to be excluded, you will not get any payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Appstack in the future.

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

No. Unless you exclude yourself, you give up any right to sue Appstack for the claims that this settlement resolves. If you already have a lawsuit that may relate to the claims being released as part of this class settlement, you should speak to your lawyer in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **MONTH DAY, YEAR**.

12. If I exclude myself, can I get anything from this settlement?

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

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed Terrell Marshall Law Group PLLC and Gallagher Law Offices P.S. to represent you and other Settlement Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to \$243,750 to them for attorneys' fees and expenses. This amounts to 25% of the total \$975,000 fund. This payment would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel also will request service awards of \$2,500 each for the named Plaintiffs (\$5,000 total) to compensate them for their time and effort. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

15. 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 may give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Booth v. Appstack, Inc.* You must make your objection in writing and file it with the Court. The written objection must (a) contain information sufficient to allow the parties to confirm that you are a member of the Settlement Class; and (b) include a statement of your specific objections, as well as any documents that you would like the Court to consider. You must file the objection with the Court no later than by **MONTH DAY YEAR**.

Booth, et al. v. Appstack, Inc., et al.
Case No. 2:13-cv-01533-JLR
Clerk of the Court
U.S. District Court for the Western District of Washington
700 Stewart Street, Suite 2310
Seattle, WA 98101

16. 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. 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 have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court hold a hearing on the fairness of the settlement?

The Court will hold the final fairness hearing at [time] on [date], before the Honorable James L. Robart at the United States District Court for the Western District of Washington, 700 Stewart Street, Suite 14106, Seattle, Washington 98101. The purpose of the hearing is for the Court to determine whether the settlement is fair, reasonable, adequate, and in the best interests of the class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive awards to the Class Representatives. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

Note: The date and time of the fairness hearing are subject to change by Court Order. Any changes will be posted at the Settlement website, www.XXX.com.

18. 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 to the hearing 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 pay a lawyer to attend, but you don't have to.

19. 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 Agreement. If you filed an objection (*see* Question 15 above) and intend to appear at the hearing, you must state your intention to do so in your objection. To speak, you must send a letter saying that it is your "Notice of Intention to Appear" in "*Booth, et. al. v. Appstack, Inc., et al.*, Case No. 2:13-cv-01533-JLR." Be sure to include your name, address, telephone number, that you are a Class Member, and your signature. Your Notice of Intention to Appear must be received at the address in Question [15], no later than [redacted]. You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Appstack about the legal issues released in this case.

GETTING MORE INFORMATION

21. Are there more details about the settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may review the Settlement Agreement on the Settlement Website at www.XXX.com. You can also get a copy of the Settlement Agreement by writing to Jennifer Murray, Terrell Marshall Law Group PLLC, 936 N 34th Street, Suite 300, Seattle, Washington 98103.

22. How do I get more information?

You can call 1-XXX-XXX-XXXX toll free; write to Appstack Settlement, c/o Claims Administrator, P.O. Box XXX, CITY, STATE ZIP; or visit the website at www.XXX.com, where you will find answers to common questions about the settlement, a Claim Form, plus other information to help you determine whether you are a member of the Settlement Class. You also may write to Terrell Marshall Law Group PLLC, 936 N 34th Street, Suite 300, Seattle, Washington 98103.

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