

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

LEONARD BUSTOS and MARY WATTS,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

VONAGE AMERICA, INC. and VONAGE
HOLDINGS CORP.,

Defendants.

Case No. 06 Civ. 2308 (HAA)(ES)

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

To: All Persons in the United States who purchased Vonage Fax Service with an independent/dedicated line, prior to August 20, 2008.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.

**PLEASE DO NOT CONTACT VONAGE, THE COURT, OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. ALL CALLERS
WILL BE DIRECTED TO THE SETTLEMENT WEBSITE,
WWW.BUSTOSFAXSETTLEMENT.COM.**

WHY YOU SHOULD READ THIS NOTICE

THIS NOTICE RELATES TO BOTH THE CERTIFICATION OF A CLASS AND A PROPOSED SETTLEMENT OF THIS CLASS ACTION. IT CONTAINS IMPORTANT INFORMATION AS TO YOUR RIGHTS CONCERNING THE SETTLEMENT. IF YOU ARE A MEMBER OF THE CLASS AND DO NOT OPT OUT, YOU WILL BE BOUND BY THE RELEASES AND THE SETTLEMENT, AND ANY JUDGMENTS IN THIS CASE.

YOU ARE HEREBY NOTIFIED that the United States District Court for the District of New Jersey (the "Court") has preliminarily approved this Action to proceed as a class action for settlement purposes only, under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and has preliminarily approved a proposed Settlement. One of the purposes of this Notice is to inform you of the Final Fairness Hearing to be held by the Court to finally consider the fairness, reasonableness and adequacy of the Settlement. This Notice is also designed to advise you of how you can participate in this Settlement and receive relief, and how to be excluded from the Settlement.

If the Settlement is finally approved by the Court, the Settlement will result, among other things, in (a) a **distribution of cash awards** to Class Members who remain in the Class, who timely submit the required Claim Form (by March 2, 2009, or within 45 days of the mailing of this notice, whichever is later), and who are determined entitled to relief due to claimed problems experienced with Vonage Fax Service, and (b) the **dismissal of the pending Action and the release of certain potential or actual claims** which all Class Members may have against Vonage.

Unless otherwise defined herein, capitalized terms used in this Notice shall have the meanings specified in the Settlement Agreement on file with the Office of the Clerk of the Court, Martin Luther King Jr. Federal Courthouse, 50 Walnut Street, Newark, New Jersey 07101. A copy of the

Settlement Agreement is also posted on the Vonage Settlement Website, www.bustofaxsettlement.com.

NATURE OF ACTION

In May, 2006, Plaintiffs brought suit against Vonage, alleging that Vonage made false and misleading statements and concealed material information in the marketing, advertising, and sale of Vonage Fax Service by purportedly failing to inform consumers that the protocol Defendant used for the Vonage Fax Service was unreliable, and, according to Plaintiffs, was unsuitable for facsimile communications.

VONAGE'S DENIALS OF WRONGDOING AND LIABILITY

Vonage has denied and continues to vigorously deny the Class Representative's allegations, believes them to be without merit, and has asserted numerous defenses to the claims. Vonage believes that it has complied fully with all laws, disclosed all material facts, quickly remedied any problems customers experience with Vonage Fax Service, continued to improve Vonage Fax Service in numerous ways, and has honored and continues to honor all commitments to its customers. Vonage denies any liability in this Action and believes it will prevail on the merits of the claims with no finding of liability. Vonage has agreed to this Settlement to avoid the burdens, costs and uncertainties inherent in any litigation and because Vonage desires to resolve litigation with its valued customers.

DEFINITION OF THE CLASS

The Court has certified a class in this Action for purposes of settlement only. This Class consists of all persons in the United States who purchased Vonage Fax Service with an independent/dedicated line, as part of either a Vonage Residential Plan and who paid a minimum of \$9.99 to Vonage for service, or a Vonage Small Business Plan on which he or she made payment, to and through the date of the Settlement Agreement, August 20, 2008.

EFFECT OF PARTICIPATION IN THE SETTLEMENT

If you are a Class Member as defined herein, your legal rights with respect to the claims asserted against Vonage will be determined in the Action and you will be bound by any order or judgment that the Court has entered or will enter with respect to the Class, unless you timely request to be excluded from the Class in the manner set forth below. If you choose to be excluded from the Class, you will not be bound by the outcome of the Action.

THE SETTLEMENT

During the course of the Action, the Class Representatives and Vonage held settlement discussions. These discussions were conducted at arms-length and without collusion. As a result of intense bargaining by able counsel on both sides, the settling Parties were able to agree to the current Settlement Agreement. The Settlement would resolve all claims between the Class Members and the Released Vonage Parties.

Under the Settlement, Vonage has agreed as follows:

1. Vonage shall make available a Settlement Fund, up to, and capped at, \$1,750,000.00. Each Class Member who submits a valid Claim Form as described below will be entitled to claim upon the Settlement Fund for an amount up to, but not exceeding, the paid value of two months' fax service on an independent fax line, amounting to no more than \$19.98 per fax line in operation for two months or longer. Only one Claim Form will be accepted for each Vonage fax line.

2. Any amounts in the Settlement Fund not claimed by Class Members who submit valid Claim Forms shall revert back to Vonage, EXCEPT THAT Vonage guarantees that the Settlement Fund will be funded at a minimum of \$1,000,000.00, irrespective of the number of valid Claim Forms submitted.
3. Any portion of the \$1,000,000.00 guaranteed amount that is not distributed to Class Members who submit a valid Claim Form, if any such monies exist, shall be deemed a *cy pres* fund, the proceeds of which shall be distributed to Legal Services of New Jersey, 100 Metroplex Drive, Suite 402, P.O. Box 1357, Edison, NJ 08818-1357, as unrestricted funds upon the Settlement Effective Date. Legal Services of New Jersey is an independent, non-profit organization that strives to ensure equal access to justice under law by providing free legal assistance to low-income people in civil matters.
4. If the number of valid Claim Forms received is sufficiently high such that payment of two months' fax service to each Class Member would exceed the maximum, capped amount of the Settlement Fund (i.e., \$1,750,000.00), then amounts paid to Class Members who qualify for any amount of settlement relief shall be reduced on a pro rata basis.

In exchange for these benefits, the Settlement provides Vonage with a release of liability on behalf of the Class Members, described further below.

You Must Submit a Claim Form to Obtain Any Relief:

In order to qualify for monetary relief in the Settlement, a Class Member must submit a mandatory Claim Form electronically through the Settlement Website, www.bustosfaxsettlement.com. A separate form must be submitted for each fax line on which you are making a Claim. Only one Claim will be accepted per Vonage independent fax line. **The Claim Form must be submitted no later than March 2, 2009, or within 45 days of the mailing of this notice, whichever is later.**

The Claim Form requires that you make certain averments and representations regarding your Vonage Fax Service, your Internet service and Internet access device(s), and your use of Vonage Fax Service. Among other things:

You must provide certain personal information so that your identity can be verified.

You must aver that on three or more different occasions during the relevant period you experienced problems with sending or receiving a fax through Vonage Fax Service.

You must aver that at the time these problems were experienced:

1. You had broadband, high-speed Internet access through a cable or DSL modem that provided continuous connection to the Internet;
2. Your Internet service was working;
3. The fax you were attempting to send or receive was less than 100 pages in length;
4. You confirmed that the number dialed was correct, and that the fax machines on both sides were turned on, working, and loaded with paper; and
5. You called Vonage customer service to explain the problem, yet remained unable to successfully fax.

Each Claim Form must be signed, by electronic signature, from a Class Member himself or herself, under penalty of perjury.

No person will receive a payment pursuant to the Settlement if he or she is not the owner of a Class Claim, and does not meet all of the prerequisites for membership in the Settlement Class and all of the prerequisites for relief. Each Claim Form must be determined valid by a third-party administrator in order for a Class Member to receive a settlement award. Vonage reserves the right to verify as to each Claim Form whether the information you provide is consistent with Vonage's records.

The Fees and Costs of the Litigation and Settlement:

"Class Counsel" refers to the law firm representing members of the Class. Class Counsel has not been paid for its work and has advanced the costs of prosecuting this lawsuit which was filed on May 22, 2006. Class Counsel will apply to the Court for an award of attorneys' fees and expenses that shall not exceed 25% of the payout to Class Members in this Settlement, inclusive of the \$1,000,000 guaranteed amount. Vonage shall not pay more than such amount for any such award of attorneys' fees and expenses. The award of fees will not reduce the value of the Settlement benefits to the Class. The Court will determine what amount of attorneys' fees and expenses is appropriate. The maximum amount that Vonage will pay for fees was independently negotiated by Class Counsel and Vonage only after each side agreed to the Settlement benefits the Class would receive. The complexity of the legal and factual issues involved, the time invested by Class Counsel in developing, researching, and litigating the issues in this lawsuit, the financial burden assumed by Class Counsel in prosecuting these claims, Vonage's desire to avoid costly and protracted litigation with its valued customers, Vonage's desire to avoid the risks, expense and length of continued proceedings necessary to defend this Action through trial and any appeals, the uncertainty inherent in any litigation, and the value of Settlement for the Class all support the requested fee amount.

At the Final Fairness Hearing, Class Counsel intend to ask the Court to award an incentive fee to the Class Representatives of \$2,000.00 each to reimburse the Class Representatives for the risks they have assumed and the value of their time expended on this lawsuit.

Vonage has agreed to pay all the costs associated with implementing the Settlement. The payment of these costs will not reduce the value of the Settlement benefits to the Class.

WHY CLASS COUNSEL RECOMMENDS THIS SETTLEMENT

Relative to the risks and costs of continuing the litigation, Class Counsel believe this Settlement provides a favorable recovery which is in the best interests of the Class. Class Counsel's evaluation is based on their investigation and experience prosecuting similar cases. Absent settlement, Plaintiffs would have to secure class certification on the claims set forth in the Action over the strenuous opposition of Vonage. There are significant risks associated with continuing to litigate and proceeding to trial. For example, the Class faced the serious possibility that many of the claims in this case could have been disposed of pursuant to a motion for summary judgment before trial. In addition, there was substantial risk that the Class would not have prevailed on its claims against Vonage even if those claims eventually went to trial, in which case the Class would receive nothing. The Settlement eliminates these risks.

In addition, settling the case now has the further advantage of avoiding the very substantial additional costs and delay that further litigation would involve. Vonage has made it clear that it would seek appellate review before trial of any grant of class certification outside the settlement context and that it would appeal any final adverse result at trial. Thus, absent settlement, it is likely to be years before the litigation ends and Class Members receive a monetary recovery, if any. Given the costs involved in further litigation and the time-value of money, even if a favorable judgment were obtained at trial, it could well produce less net recovery to the Class Members than the present Settlement.

This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action, the certification of the Class,

the Settlement, or your rights in connection therewith.

THE RIGHTS OF CLASS MEMBERS

If you are a Class Member, unless you request to be excluded from the Class as described below, you will have the option to receive the benefit of this Settlement by submitting a Claim Form as described above. Whether or not you submit a Claim Form, and whether or not that Claim Form is determined to be valid, you will be bound by the terms of the proposed Settlement described in this Notice, upon approval of the Settlement by the Court.

If you are a Class Member, you have the following options:

1. *You Can Stay In the Class.* You do not need to do anything to stay in the Class. If the Court approves the Settlement, you automatically are in the Class. Again, you must timely submit a Claim Form to receive any Settlement relief.
2. *You Can Opt Out of the Class.* You may choose to remove yourself from the Class by submitting a timely Opt-Out Notice. If you want to opt out, here is what you must do:
 - A. Prepare an Opt-Out Notice in writing that must contain the following:
 1. Your name, address and telephone number, and your email address on the date your Vonage account was activated;
 2. Date of purchase of Vonage Fax Service; A clear statement that you want to opt out of the Settlement, and receive none of the benefits of the Settlement; and
 3. Your signature.
 - B. Mail your Opt-Out Notice by First-Class Mail, postmarked by the latter of (a) March 2, 2009, or (b) forty-five (45) days from the date this Notice was sent to you, to Vonage's Counsel, Sonnenschein Nath & Rosenthal LLP, Attn: Sandra D. Hauser, 1221 Avenue of the Americas, 23rd Floor, New York, NY 10020.

If you submit an Opt-Out Notice and then change your mind, you can revoke the Opt-Out Notice by sending a statement in writing, with all the same information, to the address above, stating that you want to revoke your Opt-Out Notice. Your revocation will be good if it is postmarked no later than March 2, 2009. Vonage's Counsel will provide the total number of the Opt Outs to Class Counsel and to the Court by March 2, 2009.

Two Important Things to Remember About Opting Out:

1. If you Opt Out, you cannot object to the Settlement.
2. If you do not Opt Out, you will be a member of the Class, you will be entitled to the Settlement benefit and your individual claims against Vonage will be released and you may also object to the Settlement as outlined below.

DO NOT CONTACT OR TELEPHONE THE COURT IN AN ATTEMPT TO OPT OUT.

3. *You Can Stay In the Class, But Object to the Settlement. If You Want to Object to the Settlement, Here Is What You Must Do:*
 - A. Prepare a written objection. The objection must contain:

1. Your name, address and telephone number, and your email address on the date your Vonage account was activated;
 2. Date of purchase of Vonage Fax Service;
 3. A statement of your objection to the Settlement and the grounds for any such objection;
 4. A statement that you have not opted out; and
 5. Your signature.
- B. Mail your originally signed objection by First-Class Mail, postmarked by March 2, 2009 to Class Counsel, Jean-Marc Zimmerman, Zimmerman Levi & Korsinsky LLP, 226 St. Paul Street, Westfield, NJ 07090, and serve a copy by First-Class Mail, postmarked by March 2, 2009 on Vonage's Counsel, Sonnenschein Nath & Rosenthal LLP, Attn: Sandra Hauser, 1221 Avenue of the Americas, 23rd Floor, New York, NY 10020.

Five (5) days prior to the Final Fairness Hearing, Class Counsel will file with the Court, after first conferring with Vonage's Counsel regarding any such submission, the objections received by Class Counsel and the Parties' responses thereto.

Five Important Things to Remember About Objecting:

1. If you opt out, you can't object.
2. If your objection is not timely, it may not be considered by the Court, as only timely objections will be submitted to the Court.
3. You do not have to hire a lawyer to object, but you can if you want to. If you hire a lawyer, you are responsible for paying your lawyer. Your lawyer must be admitted to practice in the Court or must associate with a lawyer who is. Your lawyer must (i) file a notice of appearance with the Clerk of the Court no later than February 24, 2009, or as the Court may otherwise direct, and serve your objection, in compliance with Paragraph 3(A) above and (ii) file and serve by First-Class Mail copies of the notice of appearance on Class Counsel and Vonage's Counsel at the addresses set forth above, postmarked no later than February 24, 2009. If you are represented by a lawyer and you, your lawyer, or both of you want to appear at the Final Fairness Hearing, your attorney must comply with the provisions described above.
4. If you are not represented by a lawyer, and you have properly and timely made your objections, and are not an Opt-Out Claimant, and you wish to appear at the Final Fairness Hearing, you must send by First-Class Mail to Class Counsel, and serve by First-Class Mail on Vonage's Counsel a notice of intention to appear at the Final Fairness Hearing postmarked no later than February 24, 2009, and file with the Court a notice of intention to appear no later than February 24, 2009.
5. The notice of intention to appear shall set forth: (i) the name, address and telephone number of the Class Member; and (ii) the objection, including any papers constituting or containing any factual, evidentiary and/or legal authority in support thereof. Any Class Member who is not represented by an attorney and who does not timely send to Class Counsel and Vonage's Counsel a proper written objection and notice of intention to appear postmarked no later than March 2, 2009 and file a notice of intention to appear with the Clerk of the Court no later than February 24, 2009, shall not be permitted to object or appear at the Final Fairness Hearing, shall be

deemed to have waived and forfeited and shall be foreclosed from raising any objection at the Final Fairness Hearing, and shall be bound by all of the terms of the Settlement and by all proceedings, orders and judgments by the Court in the Action. Any Class Member who is represented by an attorney and who does not timely file and serve a proper written objection, and a notice of intention to appear no later than February 24, 2009, shall not be permitted to object or appear at the Final Fairness Hearing, shall be deemed to have waived and forfeited and shall be foreclosed from raising any objection at the Final Fairness Hearing, and shall be bound by all of the terms of the Settlement and by all proceedings, orders and judgments by the Court in the Action.

DO NOT CONTACT OR TELEPHONE THE COURT IN AN ATTEMPT TO OBJECT.

THE FINAL FAIRNESS HEARING

A Final Fairness Hearing will be held at 10:00 a.m. on March 26, 2009 before the Honorable Harold Ackerman in his courtroom at the United States District Court for the District of New Jersey, which is located at the Martin Luther King Jr. Federal Courthouse, 50 Walnut Street, Newark, NJ 07101. The purpose of the hearing is to determine:

1. Whether the Settlement is fair, adequate and reasonable, and in the best interests of Class Members;
2. Whether the Court should enter a Final Order approving the Settlement, dismissing with prejudice and on the merits the claims against Vonage, and releasing the Class Claims against the Released Vonage Parties;
3. Whether the Court should approve the applications for attorneys' fees and expenses which will be filed by Class Counsel; and
4. Whether the Court should approve the application of the Class Representatives for awards of incentive fees.

The Final Fairness Hearing may be postponed or adjourned from time to time by the Court without further prior notice. The Court's calendar may be obtained from the Clerk of the Court.

The Court may approve the Settlement, or it may approve the Settlement with changes that the Parties may agree upon, and without further notice to you or to the members of the Class.

THE CONSEQUENCES OF THE SETTLEMENT

1. If the Settlement Agreement is approved by the Court and subsequently becomes Final:
 - A. The litigation will be dismissed with prejudice.
 - B. Vonage and the Released Logitech Parties will be released from the "Class Claims" and related claims as described below on behalf of all Class Members, except those who opt out. "Class Claims" and the "Release" are defined below.

2. "*Class Claims*" means the following:

All claims which were or could have been brought against in any way relating to the operation and quality of Vonage Fax Service, including but not limited to all claims which were brought or could have been brought in the Complaint in this Action.

3. "*Release*" means the following:

- A. As of the Effective Date, the Class Representatives and Settlement Class Members, and anyone acting on their behalf or in their interest, together with their respective heirs, executors, trustees, administrators, beneficiaries, predecessors, successors, representatives and assigns, parents, entities, subsidiaries, affiliates and custodians or any and all of them, and whether or not they participate in the Settlement, hereby fully, finally, and forever settle, release, and discharge the Vonage Released Parties (as defined in the Settlement Agreement) from the Class Claims (as defined above) and all Released Claims as defined below, and will forever be barred and enjoined from asserting any of the Class Claims in any court or forum whatsoever. The provisions of any state, federal, municipal, local, or territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries, or damages that are unknown or unsuspected to exist at the time this Agreement is executed and approved by the trial court, are expressly, knowingly, and voluntarily waived by the Class Representatives and Settlement Class Members. In addition, to the extent applicable, Class Representatives and Settlement Class Members waive the application of Section 1542 of the California Civil Code (and any similar law of any other state), which provides that: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."
- B. The term "Released Claims" shall mean any and all claims or causes of action of any nature whatsoever, regardless of legal theory and the type of relief or damages claimed, including but not limited to any claim for violations of federal, state, or other law (whether in contract, tort, or otherwise, including statutory, common law, property, and equitable claims), and also including "Unknown Claims" that have been or could have been asserted against the Released Parties in the Action or any other complaint, action, or litigation in any other court or forum, based upon or in any way relating to the operation and quality of Vonage Fax Service, including:
1. Any such claim for breach or violation of, or for benefits conferred by, any federal, state, common or other law or statute, regulation or ordinance, including without limitation those concerning consumer or other transactions, unfair or deceptive business practices, consumer legal remedies, securities laws, or private attorney general;
 2. Any such claim for breach of any duty imposed by law, by contract or otherwise, including without limitation breach of contract, constructive trust, restitution, or unjust enrichment;
 3. Any such claim based on principles of tort law, consumer protection, or other kind of liability including without limitation negligence, fraud or consumer fraud, negligent or intentional misrepresentation, conversion, or other direct or derivative liability;
 4. Any such claim for declaratory or injunctive relief, restitution or disgorgement, or other equitable relief; and
 5. Any such claim for penalties, punitive damages, exemplary damages, or any other claim for damages based on a multiplication of compensatory damages.
- C. The term "Unknown Claims" means claims arising out of new facts or facts found hereafter to be other than or different from the facts now believed to be true, relating to any matter covered by this agreement, as to the matters alleged or which could have been alleged by the Plaintiffs or other putative Class Members in the *Bustos* Litigation, so that each Plaintiff and Class Member shall be deemed to have expressly waived any and all unknown claims relating to any matter covered

by this agreement.

4. As part of the Final Order of the Court in this Action, all Settlement Class Members will be permanently enjoined from, among other things, filing, commencing, prosecuting, intervening or participating in, whether individually or as a Class Member, any claim, action or lawsuit of any kind in any jurisdiction or forum based on any Released Claims. Any such claim, action or lawsuit already pending as of the date of the Final Order shall be enjoined and dismissed with prejudice as to all Settlement Class Members.

CONDITIONAL SETTLEMENT AND SUBJECT TO CHANGE

This Settlement is Conditional, and may either be terminated by the Parties, or rejected by the Court, on various grounds. The terms of the Settlement may also change in various respects, with the approval of the Court, *but without further Notice to you*. All Court Orders shall be posted to the Settlement Website. If the Settlement is terminated for any reason, this Notice shall be null and void, and shall have no force or effect, no party shall be bound thereby, and neither this Notice, nor the fact of it having been sent, shall be admissible or entered into evidence for any purpose whatsoever in any jurisdiction or forum.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

This Class Notice contains only a summary of the Action and terms of the proposed Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed "Settlement Agreement," which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including that stipulation, may be examined at any time during regular business hours at the Office of the Clerk of the United States District Court for the District of New Jersey. Additional material is posted online at www.bustosfaxsettlement.com.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

By Order of the United States District Court for the District of New Jersey, December 2, 2008.

Dated: January 16, 2009

The Honorable Harold Ackerman
United States District Judge

Sincerely,
Bustos v. Vonage Claims Administrator