

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-cv-61350-ALTMAN/Hunt

In re: Citrix Data Breach Litigation,

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ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT

THIS MATTER comes before the Court on the Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (the “Motion”) [ECF No. 53], which was filed on October 30, 2020.

The parties—the Plaintiffs¹ and the Defendant, Citrix Systems, Inc.—through their respective counsel, and subject to the Court’s approval, have agreed to resolve this lawsuit via a class action settlement. Following notice to the Class Members and a hearing, the parties seek to resolve this lawsuit (the “Lawsuit”) on the terms and conditions set forth in the Amended Class Action Settlement Agreement (the “Amended Settlement Agreement”) [ECF No. 53-1], which has been filed with the Court. After careful review, the Court hereby

ORDERS AND ADJUDGES that the Plaintiffs’ Motion [ECF No. 53] is **GRANTED** as follows:

Based on the Amended Settlement Agreement and all the files, records, and proceedings in this case, the Court preliminarily finds that the proposed settlement is fair, reasonable, and adequate, and that a Final Approval Hearing should (and will) be held on **June 10, 2021**—following notice to the Class Members—to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Order and Judgment should be entered in this case.

¹ The Plaintiffs named in the Consolidated Complaint [ECF No. 18] are: Lee Milligan, on behalf of himself and his minor son; Lindsey Howard; Kristi Jackson; Michelle Ramus; Charles Ramus; Brandon Sargent; and Natalie Young. *See* Mot. at 7.

The Court finds that it has jurisdiction over the subject matter of the Lawsuit and over all the settling parties. In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d)(2), 1453, and 1711–1715, the Defendants will serve on the members of the class written notice of the proposed settlement.

Pursuant to FED. R. CIV. P. 23(b)(3), the Lawsuit is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following class (the “Class Members”) with respect to the claims asserted in the Lawsuit:

All individuals residing in the United States who were sent notification by Citrix that their personal information was or may have been compromised in the data breach initially disclosed by Citrix in or about March 2019.

Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

The proposed Settlement Class is defined as the 24,316 individuals identified on the Settlement Class List. *See* Amended Settlement Agreement ¶ 36.

Pursuant to FED. R. CIV. P. 23, the Court appoints the Plaintiffs named in the Consolidated Complaint as the Class Representatives. The Court further finds that the attorneys the Court previously appointed as Liaison Counsel and Interim Class Counsel² pursuant to Rule 23(g)(3) satisfy the requirements of Rule 23(e)(2)(A). The Court therefore appoints those same lawyers as Settlement Class Counsel under Rule 23(g)(1).

The Court preliminarily finds that, for purposes of settlement only, the Lawsuit satisfies the applicable prerequisites for class action treatment under FED. R. CIV. P. 23—namely:

² Those lawyers are: John A. Yanchunis of Morgan & Morgan; J. Austin Moore of Stueve Siegel Hanson LLP; Gayle M. Blatt of Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP; Rosemary M. Rivas of Levi & Korsinsky, LLP; and Herman J. Russomanno III of Russomanno & Borrello, P.A.

- A. The Class Members are so numerous that joinder of all of them in the Lawsuit would be impracticable;
- B. There are questions of law and fact common to the Class Members, which predominate over any individual questions;
- C. The Plaintiffs' claims are typical of the claims of the Class Members;
- D. The Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all Class Members; and
- E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

In *Johnson v. NPAS Sols., LLC*, the Eleventh Circuit held that “Rule 23(h)’s plain language requires a district court to sequence filings such that class counsel file and serve their attorneys’-fee motion *before* any objection pertaining to fees is due.” 975 F.3d 1244, 1252 (11th Cir. Sept. 17, 2020). Given *Johnson’s* clear directive, this Court denied the Plaintiffs’ [Initial] Unopposed Motion for Preliminary Approval of Class Action Settlement [ECF No. 46], because it had proposed (1) mailing the class notice form *before* Class Counsel filed its motion for attorney’s fees and (2) awarding the Class Representatives compensation “in recognition of their role in this litigation,” [ECF N. 46-1] at 34, which is “precisely the kind of incentive award the Supreme Court has criticized as ‘decidedly objectionable.’” Order Denying Unopposed Motion for Settlement (the “Order”) [ECF No. 51] at 3 (quoting *Johnson*, 975 F.3d at 1258). The Court gave the parties a chance to refile their motion, together with an Amended Settlement Agreement, which they’ve now done. The Court also ordered the parties to reformulate their proposed notice form to include the specific amount of money Class Counsel is seeking in its Motion for Attorneys’ Fees. *See id.* at 2. This fix, too, has been made. *See* Amended Settlement Agreement at 34. The parties shall file their Motion for Attorneys’ Fees within ten (10) days after the Court enters this Preliminary Approval Order—i.e., **by February 4, 2021**. The claim form will explicitly state that Class Counsel are seeking (1) attorneys’ fees of \$750,000 (which equals

32.9% of the settlement funds), and (2) costs and expenses as set forth in Class Counsel's Motion for Attorneys' Fees (which will have already been filed). The claim form will also state that Class Counsel's Motion for Attorneys' Fees can be accessed at the Settlement Website: www.CitrixDataBreachSettlement.com.

The Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Amended Settlement Agreement—reached with the assistance of former Federal Magistrate Judge Jay C. Gandhi of JAMS ADR—is in all respects fundamentally fair, reasonable, adequate, and in the best interests of the Class Members. In making this determination, the Court has considered the current posture of the litigation and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.

A third-party class administrator acceptable to the parties will administer the settlement and notification to Class Members. Upon the recommendation of the parties, the Court appoints the following Settlement Administrator: Angeion Group.

The Court approves the form and substance of the Notice of Class Action Settlement, which is attached to the Amended Settlement Agreement as Exhibit 1. The Notice's form, the method it proposes to use to notify Class Members of the settlement, and its various terms and conditions meet the requirements of FED. R. CIV. P. 23(c)(2)(B) and the Due Process Clause, constitutes the best notice practicable in the circumstances, and is likely to provide sufficient notice to all Class Members. The Court further finds that the proposed notice plan will adequately advise the Class Members of their rights. The parties shall issue the Notice to Class Members within 21 days after entry of this Preliminary Approval Order—i.e., **by February 16, 2021**.

The Settlement Administrator shall carry out the Notice Plan in conformance with the Amended Settlement Agreement. Within 14 days after the date of this Preliminary Approval Order (i.e., **by February 8, 2021**), Citrix shall provide the Settlement Class List to the Settlement

Administrator. Within seven days after it receives the Settlement Class List, the Settlement Administrator shall disseminate Notice to the Settlement Class Members. The costs of preparing, printing, publishing, mailing, and otherwise disseminating the Notice shall be paid from the settlement funds in accordance with the Amended Settlement Agreement.

Any Class Member who wants to be excluded from the Settlement Class must send a written request for exclusion to the Settlement Administrator. That request must be postmarked within 40 days after the Notice deadline—i.e., **by March 28, 2021**. To be effective, the written request for exclusion must state the name of the proceeding along with the individual's full name, current address, personal signature, and the words "Request for Exclusion" (or some comparable statement that the individual does not wish to participate in the Settlement) at the top of the communication. Any Class Member who submits a valid and timely Request for Exclusion will not be bound by the terms of the Amended Settlement Agreement. Any Class Member who *does not* file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude him or herself from the settlement and will be bound by the settlement.

Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 40 days after the Notice deadline—i.e., **by March 28, 2021**. Specifically, any such Class Member must, **by March 28, 2021**, either (a) electronically file a copy of the objection on the Court's docket; or (b) mail a copy of the objection to the Settlement Administrator at the address listed in the Notice. If the Class Member is objecting by mail, the objection must be postmarked no later than **March 28, 2021**. For the objection to be considered by the Court, the objection must be in writing and include:

- (a) the name of the proceedings (In re: Citrix Data Breach Litigation, No. 19-cv-61350-RKA or similar identifying words such as "Citrix Data Breach Lawsuit");
- (b) the objector's full name, current mailing address, and telephone number;
- (c) a statement of the specific grounds for the objection, as well as any documents

supporting the objection;

(d) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;

(e) the identity of any attorneys representing the objector;

(f) a statement regarding whether the objector (or his/her attorney) intends to appear at the Final Approval Hearing; and

(g) the signature of the objector or the objector's attorney.

Any Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the settlement. The right to object to the settlement must be exercised individually by a Class Member—not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

Any Class Member who qualifies, and wishes to submit a claim, for benefits under the Amended Settlement Agreement, shall do so in accordance with the Class Notice and Claim Forms. *See* Exhibit 2 to Amendment Settlement Agreement: Claim Form [ECF No. 53-1] at 37; Exhibit 3 to Amendment Settlement Agreement: Minor Claim Form [ECF No. 53-1] at 43. The Claim Form, which may be accessed at www.CitrixDataBreachSettlement.com, must be submitted to the Settlement Administrator either electronically or by mail. But, if the Claim Form is sent by mail, it must be postmarked within ninety (90) days after the Notice Deadline—i.e., **by May 17, 2021**. Irrespective of a Class Member's qualifications, failure to submit a claim in accordance with the procedures specified in the Notice shall bar said Class Member from receiving any such benefit.

The Court will conduct a Final Approval Hearing on **June 10, 2021** via Zoom Videoconference.³ At that Final Approval Hearing, the Court will review, and rule on, the following issues:

- (a) Whether this matter should be finally certified as a class action for settlement purposes under FED. R. CIV. P. 23(a) and (b)(3);
- (b) Whether the settlement should be approved as fair, reasonable, and adequate under FED. R. CIV. P. 23(e);
- (c) Whether this Lawsuit should be dismissed with prejudice pursuant to the terms of the Amended Settlement Agreement;
- (d) Whether the Class Members should be bound by the releases set forth in the Amended Settlement Agreement;
- (e) Whether the application of Class Counsel for an award of attorneys' fees, costs, and expenses should be approved under FED. R. CIV. P. 23(h); and
- (f) Any other issues the Court deems appropriate.

Attendance by Class Members at the Final Approval Hearing is not necessary. Class Members need not appear at the Hearing or take any other action to indicate their approval of the proposed class action settlement (besides submitting the aforementioned Claim Form). Any Class Members who want to be heard, however, must appear at the Final Approval Hearing. The Final Approval Hearing may be postponed, adjourned, transferred, or continued without further notice to the Class Members.

This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to the respective positions they occupied immediately before the Court entered this Order, if (a) the Settlement is not finally approved by the Court or is terminated in accordance with the Amended Settlement Agreement, or (b) there is no Effective Date.

The Court retains continuing and exclusive jurisdiction over this Lawsuit to consider all further matters arising out of or connected with the settlement, including the administration and enforcement

³ By May 11, 2021, the Court shall post on the docket the dial-in information for the video hearing.

of the Amended Settlement Agreement. To facilitate the orderly and efficient administration of this case, the Court hereby sets the following schedule:

<u>Date</u>	<u>Event</u>
January 25, 2021	Preliminary Approval Order Entered
February 4, 2021	Class Counsel's Motion for Attorneys' Fees, Costs, and Expenses (10 days after Preliminary Approval Order)
February 8, 2021	Deadline for the Defendant to provide Settlement Class List to Settlement Administrator (14 days after Preliminary Approval Order)
February 16, 2021	Notice Deadline (21 days after Preliminary Approval Order)
March 28, 2021	Deadline to Send Exclusion or File Objection (40 days after Notice Deadline)
May 17, 2021	Claims Deadline (90 days after Notice Deadline)
May 20, 2021	Motion for Final Approval (21 days before Final Approval Hearing)
June 10, 2021	Final Approval Hearing

DONE AND ORDERED in Fort Lauderdale, Florida, on January 25th, 2021.



ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE