

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

FILED
San Diego Superior Court

NOV 08 2024

Clerk of the Superior Court
By: K. Sorianosos, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LARRY NELSON and JOHN DAUB,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

SYSTEM1, INC., a Delaware corporation;
TOTAL SECURITY LIMITED, a UK private
company; PROTECTED.NET LLC, a
Delaware limited liability company; and
DOES 1-50, inclusive,

Defendants.

CASE NO. 37-2023-00045878-CU-BT-CTL

CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND PROVIDING FOR
NOTICE

[IMAGED FILE]

1 Pending before the Court is the Motion for Preliminary Approval of Class Action Settlement
2 (“Motion”) relating to the Settlement Agreement (“Settlement”) between Larry Nelson and John
3 Daub (“Plaintiffs”) and defendants System1, Inc., Total Security Limited, and Protected.net LLC
4 (collectively referred to as “Defendants”). Having read and considered the moving papers, including
5 the Settlement Agreement, and finding good cause, the Court finds and orders as follows:

6 1. Based upon the Court’s review of the Settlement Agreement, the Memorandum of
7 Points and Authorities in Support of the Motion, the discussion at the hearing conducted on
8 November 8, 2024, and the entire record, the Motion for Preliminary Approval of Class Action
9 Settlement is GRANTED.

10 2. The Court hereby conditionally certifies the following class (“Class”) for settlement
11 purposes only: “All California residents who, between October 20, 2019 and June 30, 2024, were
12 enrolled in and charged for an automatic renewal or continuous service subscription for Protected
13 Software offered by any of the Defendants, limited to individuals who did not receive a full refund
14 of any amounts paid towards such automatic renewal or continuous service subscription. Excluded
15 from the Class are all employees of Defendants, all employees of Plaintiffs’ counsel, and the judicial
16 officers to whom this case is assigned.” The term “Protected Software” means one or more of the
17 following software as service products made available to consumers via the internet for download
18 or via application marketplaces: PC Protect, ScanGuard, Total Adblock, TotalAV, Total Password,
19 Total VPN, and Total WebShield. The Court grants leave for Plaintiffs to file a First Amended
20 Complaint, setting forth the foregoing definition of the Class. Defendants are deemed to have denied
21 all material allegations of the First Amended Complaint without the necessity of filing an Answer.

22 3. The Court appoints Dostart Hannink LLP as Class Counsel. The Court appoints
23 plaintiffs Larry Nelson and John Daub as the Class Representatives. The Court designates CPT
24 Group, Inc. as the Settlement Administrator.

25 4. The Court preliminarily approves the Settlement,¹ including the monetary relief,
26

27 ¹ The definitions of capitalized terms in this Order are the same as the definitions of those terms in
28 the Settlement Agreement.

1 injunctive relief, procedure for payment of Class Counsel’s attorneys’ fees and litigation expenses
2 to the extent ultimately awarded by the Court, and procedure for payment of any service awards to
3 the extent ultimately awarded by the Court. The Court has reviewed the monetary relief and the
4 injunctive relief that are provided as part of the Settlement and recognizes the value to the Class. It
5 appears to the Court on a preliminary basis that the Settlement is fair, adequate, and reasonable as
6 to all Class Members when balanced against the cost and uncertainty associated with further
7 litigation. It further appears that settlement of the Action at this time will avoid substantial additional
8 costs by all Parties, as well as the delay and risks that would be presented by the further prosecution
9 of the Action. It also appears that the Settlement has been reached as a result of intensive, serious,
10 and non-collusive arm’s-length negotiations.

11 5. The Court approves the emailed Summary Class Notice (Exhibit A to the Settlement
12 Agreement), the mailed Summary Class Notice (Exhibit B to the Settlement Agreement), the Long
13 Form Notice (Exhibit C to the Settlement Agreement), and the paper Claim Form (Exhibit D to the
14 Settlement Agreement). The notice procedure described in the Settlement Agreement meets the
15 requirements of Rule 3.766(d) of the California Rules of Court and due process, and constitutes the
16 best practicable notice under the circumstances. The Settlement Administrator is directed to
17 disseminate the Summary Class Notice to Class Members via email (or, if no email address is
18 available, then via U.S. Mail) no later than twenty-eight (28) days following entry of this Order. The
19 date on which the Summary Class Notice is emailed or mailed is the “Notice Date.” The Settlement
20 Administrator is directed to take all steps necessary to establish a settlement website and to post the
21 Long Form Notice on the website by the Notice Date.

22 6. In order to receive a share of the Settlement Amount, Class Members must file a
23 timely Claim, either electronically via the Settlement Website or via a paper Claim Form, and that
24 Claim must be validated by the Settlement Administrator. Completed Claims that are timely
25 submitted electronically through the Settlement Website by individuals to whom the emailed or
26 mailed Summary Class Notice was sent will be deemed valid. Completed Claims that are submitted
27 in the form of a paper Claim Form will be deemed valid if the claimant’s name and the claimant’s
28 mailing address and/or email address match information in the Class List. To be timely, the Claim

1 must be returned to the Settlement Administrator no later than the Claim/Exclusion/Objection
2 Deadline. If the Claim is returned via the Settlement Website, the date of return will be the date of
3 submission through the Settlement Website. If the Claim is returned by U.S. Mail, the date of return
4 will be the date of postmark. If the Claim is returned by personal delivery or email, the date of return
5 will be the date the Claim is received by the Settlement Administrator. The Parties may jointly direct
6 the Settlement Administrator to treat as timely a Claim received by the Settlement Administrator
7 after the Claim/Objection/Exclusion Deadline and before the Final Approval Hearing.

8 7. If the Settlement Administrator disallows a Claim based on a deficiency that can be
9 cured (such as the failure to sign the Claim Form), the Settlement Administrator has the discretion
10 to either waive the deficiency or notify the claimant of the reason for the disallowance and invite
11 the claimant to cure the deficiency. The Settlement Administrator also will consider any additional
12 information or corrective action by the claimant submitted within twenty-one (21) days after the
13 mailing of the notice of deficiency.

14 8. As set forth in the Settlement Agreement, any individual who wishes to exclude
15 himself or herself from the Settlement shall mail, email, or deliver to the Settlement Administrator
16 a written request for exclusion no later than sixty (60) days following the Notice Date. Class
17 Members who do not timely request exclusion shall be bound by the provisions of the Settlement
18 Agreement and all orders or judgments that may be entered by the Court.

19 9. Class Members may object to the Settlement in writing. To object to the Settlement,
20 a Class Member must file a written objection with the Court and serve copies of the objection on
21 Class Counsel, Defendants' counsel, and the Settlement Administrator, no later than sixty (60) days
22 following the Notice Date. The written objection must set forth the name of the lawsuit (*Nelson, et*
23 *al. v. System1, Inc., et al.*, Case No. 37-2023-00045878-CU-BT-CTL), the Class Member's name,
24 address, email address, and telephone number, and the following statement: "I declare under penalty
25 of perjury that, to the best of my knowledge, between October 20, 2019 and June 30, 2024, I was
26 charged by Defendants for an automatic renewal or continuous service subscription and I wish to
27 object to the Settlement." The written objection must also state the factual and legal basis for the
28 objection; the name and contact information of any and all attorneys representing, advising, or in

1 any way assisting the objector in connection with the preparation or submission of the objection or
2 who may profit from the pursuit of the objection; and a statement indicating whether the objector
3 intends to appear at the Final Approval Hearing. Any documents that the objecting Class Member
4 wishes for the Court to consider must also be attached to the filed objection. Any written objection
5 must be filed with the Court and served by mail as follows: (1) Nelson v. System1 Settlement
6 Administrator, c/o CPT Group, Inc., 50 Corporate Park, Irvine, California 92606; (2) to Defendants'
7 counsel, Patrick C. Justman, Latham & Watkins, LLP, 12670 High Bluff Drive, San Diego,
8 California 92130; and (3) to Class Counsel, Zach P. Dostart, Dostart Hannink LLP, 4225 Executive
9 Square, Suite 600, La Jolla, California 92037.

10 10. Plaintiffs shall file their motion for final approval, which may be combined with
11 Class Counsel's motion for attorneys' fees, litigation expenses, and for any service awards to the
12 Class Representatives and to other Class Members who assisted Class Counsel, by the date specified
13 below. The motion for final approval shall identify one or more proposed *cy pres* recipient(s) for
14 any excess funds, consistent with Section IV.B. of the Settlement Agreement and with Code of Civil
15 Procedure section 384.

16 11. A Final Approval Hearing shall be held by this Court, located at 330 West Broadway,
17 San Diego, California 92101, Department 60, on 3/7, 2025, at 9:00 a.m.,
18 at which time the Court will determine whether the Settlement should be granted final approval. At
19 that time, the Court will also consider Class Counsel's motion for attorneys' fees, litigation
20 expenses, and any proposed service awards.

21 12. If the Settlement is not finally approved by the Court, (i) the conditional certification
22 of the Class shall be withdrawn, (ii) the First Amended Complaint shall be vacated; and (iii) the
23 Settlement Administrator will, after deducting any settlement administration expenses incurred as
24 of that date, return any Settlement funds in its possession to Defendants.

25 13. The Court reserves the right to adjourn or continue the date of the Final Approval
26 Hearing and all dates provided for in the Settlement without further emailed or mailed notice to the
27 Class Members, and retains jurisdiction to consider all further matters arising out of or connected
28 with the proposed Settlement.

1 14. In accordance with the terms of the Settlement, the Court hereby adopts the following
 2 dates for performance of the specified activities leading to the Final Approval Hearing:

Deadline	Event
14 days after entry of this Order	Deadline for Defendants to provide to the Settlement Administrator and to Class Counsel (via a secure data transfer application) an Excel spreadsheet that includes, for each Class Member, the individual's name, mailing addresses, telephone numbers, and email addresses, to the extent such information is available in Defendants' business records (the "Class List")
14 days after entry of this Order	Deadline for Defendants to wire transfer the Settlement Amount to Settlement Administrator
28 days after of entry this Order	Deadline for Settlement Administrator to email the Court-approved Summary Class Notice to Class Members for whom an email address is available, mail the Summary Class Notice to Class Members for whom an email address is not available, and establish the Settlement Website. The date on which those actions are completed is the "Notice Date."
14 days after Notice Date	Deadline for Settlement Administrator to mail the Summary Class Notice to last known address of any Class Members for whom an email notice was bounced back as undeliverable
60 days after Notice Date	Last day for Class Members to submit completed Claim Forms
60 days after Notice Date	Last day for Class Members to object or opt out
16 court days prior to Final Approval Hearing	Deadline for Plaintiffs to file Motion for Final Approval of Settlement
10 days prior to Final Approval Hearing	Deadline for the Parties to respond to any objections to the Settlement
As set forth above in Paragraph 11	Final Approval Hearing

26 ///

27 ///

28 ///

1 15. The Parties are ordered to carry out the Settlement in the manner provided in the
2 Settlement Agreement and this Order.

3 IT IS SO ORDERED.

4 DATED: 11/8 _____, 2024

5
6 

7 _____
8 Hon. Matthew C. Braner
9 Judge of the Superior Court
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28