

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

B.D.

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego
01/22/2021 at 10:25:40 AM
Clerk of the Superior Court
By *Melissa Reyes*, Deputy Clerk

FILED
Clerk of the Superior Court

FEB 04 2021

By: B. DELGADO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

YOLANDA DILORENZO, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

BITDEFENDER INC., a Florida corporation;
AVANGATE, INC., a Delaware corporation;
and DOES 1-50, inclusive,

Defendants.

CASE NO. 37-2019-00066655-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
2 Settlement (“Motion”) relating to the settlement (“Settlement”) between plaintiff Yolanda
3 DiLorenzo (“DiLorenzo” or “plaintiff”) and defendants Bitdefender Inc. (“Bitdefender”),
4 Avangate, Inc. (“Avangate”), and their direct and indirect parent companies, direct and indirect
5 subsidiary companies, companies under common control with any of the foregoing, and affiliates,
6 agents, employees, representatives, officers, directors, predecessors, and successors in interest of
7 any of the foregoing, including, but not limited to, Bitdefender S.R.L. and Avangate B.V.
8 (collectively, “Defendants”). Having read and considered the moving papers, including the
9 Settlement Agreement, and finding good cause, the Court finds and orders as follows:

10 1. Based upon the Court’s review of the Settlement Agreement, the Memorandum of
11 Points and Authorities in Support of the Motion, and the entire record, the Motion for Preliminary
12 Approval of Class Action Settlement is GRANTED.

13 2. The Court hereby conditionally certifies the following class (“Class”) for
14 settlement purposes only: “All individuals in California who, between December 16, 2015 and
15 September 16, 2020, purchased software or another product from Defendants and to whom
16 Defendants made an automatic renewal offer or continuous service offer. Excluded from the Class
17 are all employees of Defendants, all employees of Plaintiff’s counsel, and the judicial officers to
18 whom this case is assigned.”

19 3. The Court appoints Dostart Hannink & Coveney LLP as Class Counsel. The Court
20 appoints plaintiff Yolanda DiLorenzo as the Class Representative. The Court designates CPT
21 Group, Inc. as the Settlement Administrator.

22 4. The Court preliminarily approves the Settlement, including the monetary relief,
23 injunctive relief, procedure for payment of Class Counsel’s attorneys’ fees and litigation expenses
24 to the extent ultimately awarded by the Court, and procedure for payment of a service award to the
25 Class Representative to the extent ultimately awarded by the Court. The Court has reviewed the
26 monetary relief and the injunctive relief that are provided as part of the Settlement and recognizes
27 the value to the Class. It appears to the Court on a preliminary basis that the Settlement is fair,
28 adequate, and reasonable as to all potential Class Members when balanced against the cost and

1 uncertainty associated with further litigation of liability and damages issues. It further appears
2 that settlement of the Action at this time will avoid substantial additional costs by all parties, as
3 well as the delay and risks that would be presented by the further prosecution of the Action. It
4 also appears that the Settlement has been reached as a result of intensive, serious, and non-
5 collusive arm's-length negotiations.

6 5. The Court approves the emailed Summary Class Notice (Exhibit A to the
7 Settlement Agreement), the mailed Summary Class Notice (Exhibit B to the Settlement
8 Agreement), the Long Form Notice (Exhibit C to the Settlement Agreement), and the paper Claim
9 Form (Exhibit D to the Settlement Agreement). The notice procedure described in the Settlement
10 Agreement meets the requirements of Rule 3.766(d) of the California Rules of Court and due
11 process, and constitutes the best practicable notice under the circumstances. The parties and the
12 Settlement Administrator are directed to disseminate the Summary Class Notice to the Settlement
13 Class Members as described in the Settlement Agreement, and to take all steps necessary to
14 establish a settlement website. The date on which the Summary Class Notice is emailed or mailed
15 is the "Notice Date."

16 6. As set forth in the Settlement Agreement, any individual who wishes to exclude
17 himself or herself from the Settlement Class shall mail, email, or deliver to the Settlement
18 Administrator a written request for exclusion no later than forty-five (45) days following the
19 Notice Date. Class Members who do not timely request exclusion shall be bound by the provisions
20 of the Settlement Agreement and all orders or judgments that may be entered by the Court.

21 7. Class Members may object to the Settlement or to any of its provisions either orally
22 or in writing. Any written objection shall be filed with the Clerk of this court and served upon
23 counsel for the parties and the Settlement Administrator no later than forty-five (45) days
24 following the Notice Date, or else such objection will be waived. Any written objection shall be
25 served by hand or by first-class mail upon the Settlement Administrator (CPT Group, 50
26 Corporate Park, Irvine, California 92606); Bitdefender's counsel (Oleg Elkhunovich, Susman
27 Godfrey L.L.P., 1900 Avenue of the Stars, Suite 1400, Los Angeles, California 90067);
28 Avangate's counsel (Chad Fuller, Troutman Sanders, 11682 El Camino Real, Suite 400, San

1 Diego, California 92130); and Class Counsel (Zach P. Dostart, Dostart Hannink & Coveney LLP,
2 4180 La Jolla Village Drive, Suite 530, La Jolla, California 92037). Alternatively, an objection
3 may be made to the Court orally at the Final Approval Hearing.

4 8. The parties shall file any motion for final approval, and Class Counsel shall file its
5 motion for attorneys' fees, litigation expenses, and for a service award to the Class Representative,
6 on the dates required under the Local Rules and under controlling law.

7 9. A Final Approval Hearing shall be held in this Court, 330 West Broadway, San
8 Diego, California, Department 75, on May 14, 2021, at 9:00 a.m., at which time the Court will
9 determine whether the Settlement should be granted final approval. At that time, the Court will
10 also consider any motion filed by Class Counsel for an award of attorneys' fees, litigation
11 expenses, and a proposed service award to the Class Representative. Any motions filed in support
12 of the Final Approval Hearing shall be filed per code. The Court reserves the right to adjourn or
13 continue the date of the Final Approval Hearing and all dates provided for in the Settlement
14 without further notice by mail or email to Class Members, and retains jurisdiction to consider all
15 further matters arising out of or connected with the proposed Settlement. The parties, Class
16 Members, and any other interested persons should consult the Register of Actions and the San
17 Diego County Superior Court's General Orders and website for information about whether the
18 Final Approval Hearing will proceed in person or by remote means.

19 10. Plaintiff is authorized to file a First Amended Complaint which identifies
20 Bitdefender S.R.L. and Avangate B.V. as defendants and includes the Class definition set forth
21 above in Paragraph 2. Defendants shall be deemed to have denied all material allegations of the
22 First Amended Complaint without the necessity of filing an Answer.

23 11. If the Settlement is not finally approved by the Court, (i) the First Amended
24 Complaint shall be stricken and (ii) the parties will return to the *status quo ante*, as if no
25 Agreement had been negotiated or entered into, including reversal of provisional certification of
26 the Class.

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

1 2 3	7 days after entry of this Order granting preliminary approval ("Preliminary Approval")	Deadline for Bitdefender to provide the Settlement Administrator with the name and last known home or delivery address for those Settlement Class Members with no email address in defendants' records (if any).
4 5	21 days after Preliminary Approval	Deadline for defendants to wire transfer Nine Hundred Twenty-Five Thousand Dollars (\$925,000) to the Settlement Administrator.
6 7 8 9	28 days after Preliminary Approval	Deadline for Bitdefender to email the emailed Summary Class Notice to Class Members. Deadline for the Settlement Administrator to mail the mailed Summary Class Notice to Class Members for whom Bitdefender has no email address (if any). This is the "Notice Date."
10 11 12 13	By the Notice Date, which is 28 days after Preliminary Approval	Deadline for Settlement Administrator to establish a Settlement Website on which it will make available the First Amended Complaint, the Settlement Agreement, the Summary Class Notice, the Long Form Class Notice, the Claim Form (in a format that may be printed), this Order Granting Preliminary Approval, and any other materials agreed to by the parties.
14 15 16 17	7 days after Notice Date	Deadline for Bitdefender to provide the Settlement Administrator with the name and last known home or delivery address of those Settlement Class Members for whom an emailed notice is "bounced back" and for the Settlement Administrator to mail the mailed Summary Class Notice to those Class Members.
18 19	21 days after Notice Date	Deadline for Bitdefender to send at least two follow-up reminder emails to Settlement Class Members with a valid email address.
20 21 22	45 days after Notice Date	Claim/Exclusion/Objection Deadline; Last day for Class Members to submit a Claim; last day for Class Members to request exclusion from the Class; last day for Class Members to file and serve any written objections to the Settlement.
23 24 25 26	10 court days after Claim/Exclusion/Objection Deadline	Settlement Administrator to make available to Class Counsel and defendants' counsel a written report listing the name and contact information of each Excluded Class Member and any person who has objected to the Settlement.
27 28	May 14, 2021 at 9:00 a.m.	Final Approval Hearing

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

13. The parties are ordered to carry out the Settlement in the manner provided in the Settlement Agreement and this Order.

IT IS SO ORDERED.

DATED: 2-4-21



Hon. Richard E. L. Strauss
Judge of the Superior Court

938921.1