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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re NUTANIX, INC. SECURITIES
LITIGATION

) Case No. 3:19-cv-01651-WHO
) Case No. 3:21-cv-04080-WHO
)

) CLASS ACTION

JOHN P. NORTON, ON BEHALF OF THE
NORTON FAMILY LIVING TRUST UAD
11/15/2002, Individually and On Behalf of All
Others Similarly Situated,

) [~~PROPOSED~~] ORDER PRELIMINARILY
) APPROVING SETTLEMENT AND
) PROVIDING FOR NOTICE AS AMENDED
)

Plaintiff,

vs.

NUTANIX, INC., DHEERAJ PANDEY, and
DUSTON M. WILLIAMS,

Defendants.

1 WHEREAS, related actions are pending before this Court entitled *In re Nutanix, Inc.*
2 *Securities Litigation*, No. 3:19-cv-01651-WHO (N.D. Cal.) (the “*Nutanix Action*”) and *John P.*
3 *Norton, on behalf of the Norton Family Living Trust UAD 11/15/2002 v. Nutanix, Inc., et al.*, No.
4 3:21-cv-04080-WHO (N.D. Cal.) (the “*Norton Action*,” and with the *Nutanix Action*, the
5 “*Actions*”);

6 WHEREAS, the parties having made application, pursuant to Federal Rule of Civil
7 Procedure 23(e), for an order preliminarily approving the settlement of these Actions, in
8 accordance with a Stipulation of Settlement dated April 7, 2023 (the “*Stipulation*”), which,
9 together with the Exhibits annexed thereto (Dkt. Nos. 307, 309), sets forth the terms and conditions
10 for a proposed settlement of the Actions and for dismissal of the Actions with prejudice upon the
11 terms and conditions set forth therein; and the Court having read and considered the Stipulation
12 and the Exhibits annexed thereto; and

13 WHEREAS, unless otherwise defined, all capitalized terms used herein have the same
14 meanings as set forth in the Stipulation.

15 NOW, THEREFORE, IT IS HEREBY ORDERED:

16 1. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for
17 purposes of this Settlement only, the Actions are hereby preliminarily certified as a class action on
18 behalf of: all persons or entities who: (i) purchased or otherwise acquired Nutanix, Inc. (“*Nutanix*”)
19 securities between November 30, 2017 and May 30, 2019, inclusive (the “*Class Period*”); and/or
20 (ii) transacted in publicly traded call options and/or put options of Nutanix during the Class Period.
21 Excluded from the Class are Nutanix and its subsidiaries and affiliates, the Individual Defendants,
22 any of Defendants’ respective officers and directors at all relevant times, and any of their
23 immediate families, legal representatives, heirs, successors, or assigns, and any entity in which
24 any Defendant has or had a Controlling Interest.¹

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27 ¹ “*Controlling Interest*” is defined as having a majority ownership interest or ownership of the
28 majority of voting stock of the entity.

1 2. Also excluded from the Class are any persons or entities who exclude themselves
2 by submitting a request for exclusion in connection with the Notice that is accepted by the Court.

3 3. The Court finds, for the purposes of the Settlement only, that the prerequisites for
4 a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been
5 satisfied in that: (a) the number of Class Members is so numerous that joinder of all members is
6 impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of
7 Plaintiffs are typical of the claims of the Class they seek to represent; (d) Plaintiffs and Lead
8 Counsel have and will fairly and adequately represent the interests of the Class; (e) the questions
9 of law and fact common to the members of the Class predominate over any questions affecting
10 only individual Class Members; and (f) a class action is superior to other available methods for the
11 fair and efficient adjudication of the controversy.

12 4. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules
13 of Civil Procedure, and for the purposes of the Settlement only, Plaintiffs are adequate class
14 representatives and certifies them as Class Representatives for the Class. The Court also appoints
15 Lead Counsel as Class Counsel for the Class under Rule 23(g) of the Federal Rules of Civil
16 Procedure.

17 5. After a preliminary review, the Settlement appears to be fair, reasonable, and
18 adequate. The Settlement: (i) resulted from arm’s-length negotiations overseen by an experienced
19 mediator; (ii) eliminates the risks to the Settling Parties of continued litigation; (iii) does not
20 provide undue preferential treatment to Plaintiffs or to segments of the Class; and (iv) appears to
21 fall within the range of possible approval and is therefore sufficiently fair, reasonable, and adequate
22 to warrant providing notice of the Settlement to the Class. Accordingly, the Court does hereby
23 preliminarily approve the Stipulation and the Settlement set forth therein, subject to further
24 consideration at the Settlement Hearing described below.

25 6. A hearing (the “Settlement Hearing”) shall be held before this Court on October 4,
26 2023, at 2:00 p.m., at the United States District Court for the Northern District of California, Phillip
27 Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco,
28 CA 94102, for the following purposes:

1 (a) to determine whether the Settlement is fair, reasonable, and adequate, and
2 should be approved by the Court;

3 (b) to finally determine whether Judgment as provided under the Stipulation
4 should be entered, dismissing the Complaints on the merits and with prejudice, and to determine
5 whether the release by the Class of the Released Defendant Parties as set forth in the Stipulation,
6 should be ordered, along with a permanent injunction barring efforts to bring any Released Claims
7 or Released Defendants' Claims extinguished by the Settlement;

8 (c) to finally determine whether the proposed Plan of Allocation for the
9 distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

10 (d) to determine whether the Class should be finally certified for purposes of
11 the Settlement only, and whether Plaintiffs and Lead Counsel should be finally appointed as Class
12 Representatives and Class Counsel, respectively, for purposes of the Settlement only;

13 (e) to consider the application of Lead Counsel for an award of attorneys' fees
14 and expenses;

15 (f) to consider Class Members' objections, if any, to the Settlement, Plan of
16 Allocation, and/or application for fees and expenses; and

17 (g) to rule upon such other matters as the Court may deem appropriate.

18 7. The Court may adjourn the Settlement Hearing without further notice to the
19 members of the Class and reserves the right to approve the Settlement with such modifications as
20 may be agreed upon or consented to by the Settling Parties and without further notice to the Class
21 where to do so would not impair Class Members' rights in a manner inconsistent with Rule 23 of
22 the Federal Rules of Civil Procedure and due process of law. The Court further reserves the right
23 to enter its Judgment approving the Settlement and dismissing the Complaints, on the merits and
24 with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys'
25 fees and expenses.

26 8. The Court approves, as to form and content, the Notice of Pendency and Proposed
27 Settlement of Class Action (the "Notice"), the Proof of Claim, the Summary Notice, and the
28 Postcard Notice, annexed hereto as Exhibits A-1, A-2, A-3, and A-4, AS MODIFIED BELOW,
[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR
NOTICE - 3:19-cv-01651-WHO

1 and finds that the distribution of the Postcard Notice by email or regular mail (where an email is
2 unavailable) and publishing of the Summary Notice, substantially in the manner and form set forth
3 in ¶¶11-12 of this Order, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure
4 and due process, and is the best notice practicable under the circumstances and shall constitute due
5 and sufficient notice to all Persons entitled thereto.

6 9. The Court Requires the following edits to the Long Form Notice at Exhibit A-1:

7 Paragraph 80

8 As a Class Member, for purposes of the Settlement, you are
9 represented by Plaintiffs, and Lead Counsel, unless you enter an
10 appearance through counsel of your own choice at your own
11 expense. You are not required to retain your own counsel, ~~but if you
choose to do so, such counsel must file a notice of appearance on
your behalf.~~

12 Paragraph 89:

13 89. The notice of objection must include documentation establishing
14 the objecting Person's membership in the Class, including the
15 number of Nutanix securities and/or publicly traded Nutanix options
16 that the objecting Person: (i) owned as of the opening of trading on
17 November 30, 2017; and (ii) purchased, acquired, transacted and/or
18 sold during the Class Period, as well as the dates and prices for each
19 such purchase, acquisition and sale, and contain a statement of
20 reasons for the objection, ~~copies of any papers, briefs, or other
documents upon which the objection is based,~~ a statement of
21 whether the objector intends to appear at the Settlement Hearing,
22 ~~and the objector's signature, even if represented by counsel.~~ The
23 objection must state whether it applies only to the objector, to a
24 specific subset of the Class, or to the entire Class. In addition, the
25 objector must identify all class action settlements to which the
26 objector and their, his, her, or its counsel have previously objected.
27 ~~Documentation establishing membership in the Class must consist
of copies of brokerage confirmation slips or monthly brokerage
28 account statements, or an authorized statement from the objector's
broker containing the transactional and holding information found
in a broker confirmation slip or account statement.~~ Objectors who
desire to present evidence at the Settlement Hearing in support of
their objection ~~must~~ should include in their written objection or
notice of appearance the identity of any witnesses they may call to
testify and any exhibits they intend to introduce into evidence at the
hearing.

26 Paragraph 92

27 92. You are not required to hire an attorney to represent you in
28 making written objections or in appearing at the Settlement Hearing.
~~If you decide to hire an attorney, which will be at your own expense,
however, they, he, or she must file a notice of appearance with the~~

1 Court by _____, 2023.

2 10. The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby appointed to
3 supervise and administer the notice procedure as well as the processing of Claims as more fully
4 set forth below.

5 11. Nutanix shall provide, or cause to be provided, to Lead Counsel or the Claims
6 Administrator, at no cost to Plaintiffs, the Settlement Fund, Lead Counsel, or the Claims
7 Administrator, within ten (10) calendar days after the Court enters this Order, documentation or
8 data in the possession of Nutanix or its present or former stock transfer agents sufficient to identify
9 to the extent available any record holders of Nutanix securities during the Class Period, and their
10 last known addresses, email addresses (if available), or other similar information. The Settling
11 Parties shall determine an appropriate electronic format for provision of this information.

12 12. Lead Counsel, through the Claims Administrator, shall commence emailing or
13 mailing (where an email is unavailable) the Postcard Notice, substantially in the form annexed
14 hereto, within twenty (20) calendar days after the Court signs this Order (the “Notice Date”), by
15 email or by first-class mail to all Class Members who can be identified with reasonable effort.
16 Contemporaneously with the emailing or mailing of the Postcard Notice, the Claims Administrator
17 shall cause the Notice and Proof of Claim, substantially in the forms attached hereto, to be posted
18 on the Settlement website at www.NutanixSecuritiesSettlement.com, from which copies of the
19 documents can be downloaded.

20 13. Not later than seven (7) calendar days after the Notice Date, the Claims
21 Administrator shall cause the Summary Notice to be published once in the national edition of *The*
22 *Wall Street Journal* and once over a national newswire service.

23 14. At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall
24 serve on Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such
25 emailing, mailing, and publishing.

26 15. Nominees who (i) purchased or acquired Nutanix securities for the beneficial
27 ownership of Class Members during the Class Period; and/or (ii) transacted in publicly traded call
28

1 options and/or put options of Nutanix during the Class Period, shall: (i) within seven (7) calendar
2 days of receipt of the Postcard Notice email such Postcard Notice to all such beneficial owners or,
3 where no email is available, request from the Claims Administrator sufficient copies of the
4 Postcard Notice to forward to all such beneficial owners and within seven (7) calendar days of
5 receipt of those documents forward them to all such beneficial owners; or (ii) within seven (7)
6 calendar days of receipt of the Postcard Notice, send a list of the names and addresses, including
7 email addresses where available, of all such beneficial owners to the Claims Administrator in
8 which event the Claims Administrator shall promptly email or mail (where an email is unavailable)
9 the Postcard Notice to such beneficial owners. Lead Counsel shall, if requested, reimburse banks,
10 brokerage houses, or other nominees solely for their reasonable out-of-pocket expenses incurred
11 in providing notice to beneficial owners who are Class Members out of the Settlement Fund, which
12 expenses would not have been incurred except for the sending of such notice, subject to further
13 order of this Court with respect to any dispute concerning such compensation.

14 16. In order to be entitled to participate in the recovery from the Settlement Fund after
15 the Effective Date, each Class Member shall take the following action and be subject to the
16 following conditions:

17 (a) A properly completed and executed Proof of Claim must be submitted to
18 the Claims Administrator, at the post office box or electronic mailbox indicated in the Notice and
19 Proof of Claim, postmarked no later than ninety (90) calendar days from the Notice Date. Such
20 deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to
21 have been submitted when legibly postmarked (if properly addressed and mailed by first-class
22 mail). Any Proof of Claim submitted in any other manner shall be deemed to have been submitted
23 when it was actually received by the Claims Administrator at the address designated in the Notice.

24 (b) The Proof of Claim submitted by each Class Member must satisfy the
25 following conditions: (i) it must be properly filled out, signed, and submitted in a timely manner
26 in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by
27 adequate supporting documentation for the transactions reported therein, in the form of broker
28 confirmation slips, broker account statements, an authorized statement from the broker containing

1 the transactional information found in a broker confirmation slip, or such other documentation as
2 is deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the
3 Proof of Claim is acting in a representative capacity, a certification of their, his, or her current
4 authority to act on behalf of the Class Member must be provided with the Proof of Claim; and (iv)
5 the Proof of Claim must be complete and contain no material deletions or modifications of any of
6 the printed matter contained therein and must be signed under penalty of perjury.

7 (c) Once the Claims Administrator has considered a timely submitted Proof of
8 Claim, it shall determine whether such claim is valid, deficient or rejected. For each Claim
9 determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter
10 or rejection letter as appropriate, describing the basis on which the Claim was so determined.
11 Persons who timely submit a Proof of Claim that is deficient or otherwise rejected shall be afforded
12 a reasonable time (at least twenty (20) calendar days) to cure such deficiency if it shall appear that
13 such deficiency may be cured.

14 (d) For the filing of and all determinations concerning their Proof of Claim,
15 each Class Member shall submit to the jurisdiction of the Court.

16 17. Any Class Member who does not timely submit a valid and timely Proof of Claim
17 within the time provided for shall be barred from sharing in the distribution of the proceeds of the
18 Settlement Fund, but will in all other respects be subject to and bound by the provisions of the
19 Stipulation and the Judgment, if entered. Notwithstanding the foregoing, Lead Counsel shall have
20 the discretion (but not an obligation) to accept late-submitted Claims for processing by the Claims
21 Administrator so long as distribution of the Settlement Fund to Authorized Claimants is not
22 materially delayed thereby, but will bear no liability for failing to accept such late Claims.

23 18. Any member of the Class may enter an appearance in the Actions, at their own
24 expense, individually or through counsel of their own choice. If they do not enter an appearance,
25 they will be represented by Lead Counsel.

26 19. All Class Members shall be bound by all determinations and judgments in these
27 Actions, whether favorable or unfavorable, unless such persons request to be excluded, or “opt
28 out,” from the Class. Any Class Members who wish to exclude themselves from the Class must

1 request exclusion in writing within the time and in the manner set forth in the Notice. Any such
2 Person must submit to the Claims Administrator a signed request for exclusion (“Request for
3 Exclusion”) such that it is postmarked no later than September 13, 2023 (a date that is twenty-one
4 (21) calendar days prior to the Settlement Hearing). A Request for Exclusion must provide: (i)
5 the name, address, and telephone number of the Person requesting exclusion; (ii) a list identifying
6 the number of Nutanix publicly traded securities purchased or acquired during the Class Period
7 and the date of each purchase or acquisition, and/or the number of publicly traded call options or
8 put options of Nutanix transacted and the date of each transaction; and (iii) a statement that the
9 Person wishes to be excluded from the Class. All Persons who submit valid and timely Requests
10 for Exclusion in the manner set forth in this paragraph and the Notice shall have no rights under
11 the Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be
12 bound by the Settlement or any final judgment. Unless otherwise ordered by the Court, any Person
13 who purchased or acquired Nutanix publicly traded securities, or transacted in publicly traded call
14 options and/or put options of Nutanix during the Class Period, and who fails to timely request
15 exclusion from the Class in compliance with this paragraph shall be deemed to have waived their,
16 his, her, or its right to be excluded from the Class and shall be barred from requesting exclusion
17 from the Class.

18 20. The Court will consider comments or objections to the Settlement, the Plan of
19 Allocation, or Lead Counsel’s request for an award of attorneys’ fees and expenses, that re
20 submitted to the Court either by mailing them to the Clerk of the Court, United States District
21 Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102,
22 or by filing them in person at any location of the United States District Court for the Northern
23 District of California. Such comments or objections should be filed or postmarked at least twenty-
24 one (21) calendar days prior to the Settlement Hearing, or September 13, 2023. Attendance at the
25 Settlement Hearing is not necessary, but any Person wishing to be heard orally in opposition to the
26 Settlement, the Plan of Allocation, or the application for attorneys’ fees and expenses should
27 indicate in their written objection whether they intend to appear at the Settlement Hearing. The
28 notice of objection must include documentation establishing the objecting Person’s membership

1 in the Class, including the number of Nutanix securities, call options, and/or put options that the
2 objecting Person: (i) owned as of the opening of trading on November 30, 2017, and (ii) purchased,
3 acquired, transacted, and/or sold during the Class Period, as well as the dates and prices for each
4 such purchase, acquisition, transaction, or sale, and contain a statement of reasons for the
5 objection, including whether it applies only to the objector, to a specific subset of the Class, or to
6 the entire Class. The objection must identify all other class action settlements to which the objector
7 and their, his, her or its counsel has previously objected. Any member of the Class who does not
8 make his, her, or its objection in the manner provided shall be deemed to have waived such
9 objection and shall forever be foreclosed from making any objection to the fairness or adequacy
10 of the Settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award of
11 attorneys' fees and expenses to Lead Counsel unless otherwise ordered by the Court. Class
12 Members do not need to appear at the Settlement Hearing or take any other action to indicate their
13 approval.

14 21. All funds held by the Escrow Agent shall be deemed and considered to be *in*
15 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time
16 as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

17 22. All opening briefs and supporting documents in support of the Settlement, the Plan
18 of Allocation, and any application by Lead Counsel for attorneys' fees and expenses shall be filed
19 and served no later than thirty-five (35) calendar days before the Settlement Hearing, or August
20 30, 2023. Replies to any objections shall be filed and served at least seven (7) calendar days prior
21 to the Settlement Hearing, or September 27, 2023.

22 23. The Released Defendant Parties shall have no responsibility, interest in, or liability
23 whatsoever for the Plan of Allocation or any application for attorneys' fees or expenses submitted
24 by Lead Counsel, and such matters will be considered separately from the fairness, reasonableness,
25 and adequacy of the Settlement. Any order or proceeding relating to the Plan of Allocation or any
26 application for attorneys' fees or expenses, or any appeal from any order relating thereto or reversal
27 or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay
28 the finality of the Judgment approving the Stipulation and the settlement of the Actions.

1 24. At or after the Settlement Hearing, the Court shall determine whether the Plan of
2 Allocation proposed by Lead Counsel, and any application for attorneys' fees or payment of
3 expenses shall be approved.

4 25. All reasonable expenses incurred in identifying and notifying Class Members, as
5 well as administering the Settlement Fund, shall be paid as set forth in the Stipulation, contingent
6 upon approval by the Court as reasonably incurred.

7 26. Neither this Order, the Term Sheet, the Stipulation (whether or not consummated),
8 including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of
9 allocation that may be approved by the Court), the negotiations leading to the execution of the
10 Term Sheet and the Stipulation, nor any proceedings taken pursuant to or in connection with the
11 Term Sheet, the Stipulation and/or approval of the Settlement (including any arguments proffered
12 in connection therewith): (a) shall be offered against any of the Released Defendant Parties as
13 evidence of, or construed as, or deemed to be evidence of any presumption, concession, or
14 admission by any of the Released Defendant Parties with respect to the truth of any fact alleged
15 by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of
16 any defense that has been or could have been asserted in the Actions or in any other litigation, or
17 of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released
18 Defendant Parties or in any way referred to for any other reason as against any of the Released
19 Defendant Parties, in any civil, criminal or administrative action or proceeding, other than such
20 proceedings as may be necessary to effectuate the provisions of the Stipulation; (b) shall be offered
21 against any of the Released Plaintiff Parties, as evidence of, or construed as, or deemed to be
22 evidence of any presumption, concession or admission by any of the Released Plaintiff Parties that
23 any of their claims are without merit, that any of the Released Defendant Parties had meritorious
24 defenses, or that damages recoverable under the Complaints would not have exceeded the
25 Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind,
26 or in any way referred to for any other reason as against any of the Released Plaintiff Parties, in
27 any civil, criminal or administrative action or proceeding, other than such proceedings as may be
28 necessary to effectuate the provisions of the Stipulation; or (c) shall be construed against any of

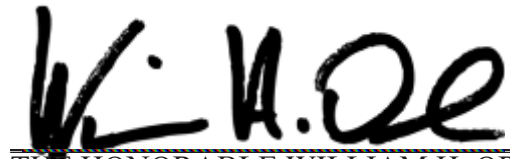
1 the Released Parties as an admission, concession, or presumption that the consideration to be given
2 under the Settlement represents the amount which could be or would have been recovered after
3 trial; provided, however, that if the Stipulation is approved by the Court, the Parties and the
4 Released Parties and their respective counsel may refer to it to effectuate the protections from
5 liability granted thereunder or otherwise to enforce the terms of the Settlement.

6 27. If the Stipulation and the Settlement set forth therein is not approved or
7 consummated for any reason whatsoever, the Stipulation and Settlement and all proceedings had
8 in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo*
9 *ante* as set forth in the Stipulation.

10 28. The Court’s orders entered during these Actions relating to the confidentiality of
11 information shall survive this Settlement.

12 IT IS SO ORDERED.

13 DATED: May 19 2023 _____



THE HONORABLE WILLIAM H. ORRICK
UNITED STATES DISTRICT JUDGE

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