

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

JEREMIAH HUGHLEY, ANTHONY
FURBUSH, LOGAN BERKOWITZ,
BENJAMIN HELLER, AND MAX
PALOMBO individually, and
on behalf of all others similarly
situated,

Plaintiffs,

CASE NO.: 2016-CA-001654-O

v.

UNIVERSITY OF CENTRAL FLORIDA
BOARD OF TRUSTEES,

Defendant.

**UNOPPOSED MOTION FOR CERTIFICATION OF A SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT**

Plaintiffs, Jeremiah Hughley, Anthony Furbush, Logan Berkowitz, Benjamin Heller, and Max Palombo, individually and on behalf of all others similarly situated (hereinafter, "Plaintiffs") hereby move the Court for the preliminary approval of the proposed class action settlement, and in support, state as follows:

1. In March 2017, Plaintiffs brought this class action lawsuit against UCF, a preeminent research university in Orlando, Florida, arising from the discovery of an intrusion into UCF's computer system in or around February of 2016.

2. Plaintiffs, who were enrolled and/or employed at UCF at some point in time, alleged that UCF failed to secure and safeguard their personal information and failed to provide timely notice to them and the putative class members about the incident. Plaintiffs asserted claims

*Joint Motion for Preliminary Approval of
Proposed Class Action Settlement
Jeremiah Hughley et al. v. University of Central Florida*

for breach of contract, negligence, negligence per se, and violations of Florida's Unfair and Deceptive Trade Practices Act and Florida statute section 1002.225.

3. The parties attended mediation on June 30, 2017, and reached a settlement agreement in principle. The parties have since drafted a settlement agreement, which is attached as Exhibit A (hereinafter, "Settlement").

4. UCF is a state agency or subdivision under Fla. Stat. section 768.28 and is thus entitled to limited sovereign immunity under that statute. *See Plancher v. UCF Athletics Ass'n, Inc.*, 175 So. 3d 724, 726 (Fla. 2015), *reh'g denied* (Sept. 25, 2015).

5. The Settlement includes an agreement by UCF to provide certain injunctive relief regarding security, consistent with industry standards, to secure the personal information of its students and employees. UCF will also pay class counsel's attorneys' fees and costs, and service awards to the Named Plaintiffs.

6. The parties request that the Court grant preliminary approval of the Settlement. In doing so, the parties also request that the Court set a final fairness hearing at which the Court will consider final approval of the proposed class action settlement. The parties will file a motion for final approval in advance of that hearing.

7. Rule 1.220(e) of the Florida Rules of Civil Procedure requires judicial approval of any settlement agreement in a class action. *See Fla. R. Civ. P. 1.220(e)*. The approval of a class action settlement is a two-step process. First, the Court must determine whether the proposed settlement deserves approval pursuant to the requirements of Florida Rule of Civil Procedure 1.220. Second, after notice, the Court must determine whether final approval is warranted. *See Manual for Complex Litigation*, Third, § 30.41, at 236-37 (1995). Courts may not approve class action settlements in reverse, by first determining that the settlement is fair, and thereby finding

*Joint Motion for Preliminary Approval of
Proposed Class Action Settlement
Jeremiah Hughley et al. v. University of Central Florida*

that certification is proper. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 622 (1997). Accordingly, in granting preliminary approval, courts typically certify the class for settlement purposes and then consider the fairness of the settlement at the final hearing. *See, e.g., Denney v. Jenkins & Gilchrist*, 2005 WL 388562 (S.D.N.Y. 2005). A court “must conduct a rigorous analysis to determine whether the elements of class action requirements have been met,” which requires “heightened scrutiny” when the parties seek “certification of the class and approval of their settlements simultaneously.” *Grosso v. Fidelity National Title Ins. Co.*, 983 So.2d 1165, 1170 (Fla. 3d DCA 2008).

8. The parties agree that notice of the class action settlement pursuant to Florida Rule of Civil Procedure 1.220(d)(2) is unnecessary given: (i) the nature of Plaintiffs’ claims; (ii) that the defendant is a public entity; (iii) the Settlement contemplates only injunctive relief, which does not waive any Class Member’s claims for damages, or provide a right to opt out of the class and the Settlement; and (iv) that UCF has already provided notice to all potential settlement class members of the cyberattack. The parties request that the Court approve the notice attached as Exhibit B to the Settlement and direct that within fourteen (14) days of this Court’s order preliminarily approving the Settlement, such notice be posted to UCF’s current data security incident webpage, where those affected are currently being informed about the cyberattack.

9. The parties respectfully submit that, for the reasons set forth herein, in the Settlement, and the below Memorandum of Law, the proposed settlement appears to be fair, adequate, and reasonable, and this Court should direct that notice of the proposed settlement be provided to the members of the class via publication on UCF’s data security incident webpage. *See Manual for Complex Litigation*, § 30.41 (3d ed. 1995).

WHEREFORE, the parties jointly request that the Court grant this Motion and issue an order granting preliminary approval of the proposed settlement.

MEMORANDUM OF LAW

A. The Rule 1.220(a) requirements are satisfied.

For the purposes of settlement, Plaintiffs and UCF request that the Court preliminarily certify the putative class members. The parties agree to the following definition for the Settlement Class, or Class Members:

All persons residing in the United States whose personal information was accessed in the cyberattack at UCF in early 2016.¹

Generally, a plaintiff must allege “the existence of a class, demonstrate that the four prerequisites specified in rule 1.220(a) are satisfied and that the action meets the criteria for one of the three types of class actions defined in rule 1.220(b).” *Estate of Bobinger v. Deltona Corp.*, 563 So. 2d 739, 742 (Fla. 2d DCA 1990). The rule also requires the pleader to define the alleged class and specify the approximate number of class members. As set forth below, this proposed Settlement Class satisfies these requirements.

The four prerequisites of subsection (a) of the rule are usually referred to as the principles of numerosity, commonality, typicality, and adequacy. *Id.* First, the parties agree that numerosity as set forth in Rule 1.220(a)(1) is satisfied on this record because joinder of more than 63,000 persons believed to have been affected into a single action would be impracticable. *See id.* (noting that numerosity requires “specifying the approximate number in the class” and that the proposed class of over 400 persons was sufficiently numerous).

¹ Excluded from this Class is any entity in which UCF has a controlling interest as well as successors and assigns of UCF. Also excluded are the judges and court personnel in this case and any members of their immediate families.

*Joint Motion for Preliminary Approval of
Proposed Class Action Settlement
Jeremiah Hughley et al. v. University of Central Florida*

Second, the commonality requirement set forth in Rule 1.220(a)(2) is satisfied for purposes of approving the Settlement and preliminarily certifying the Settlement Class. Commonality is satisfied where “the claim of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim of each member in the class.” *Bouchard Transp. Co. v. Updegraff*, 807 So. 2d 768, 771 (Fla. 2d DCA 2002) (“The class of residential property owners whose property was physically invaded by the pollution meets the test of commonality and predominance.”). Here, all members of the class are individuals whose personal information was disclosed during a data security incident at UCF in or around February 2016. This personal information was collected and stored at and by UCF. Thus, Plaintiffs’ and the Settlement Class’ claims arise from a common course of conduct and each shares a common interest in obtaining injunctive relief from UCF as it relates to how UCF collects, stores, and protects electronic files that contain individuals’ personal information.

Third, the typicality requirement set forth in Rule 1.220(a)(3) is satisfied for purposes of preliminarily approving the Settlement and certifying the Settlement Class based on the similarity of Plaintiffs’ claims with those of the Settlement Class. A common course of action by the defendant against the purported class and class representatives is sufficient to show typicality. *See Bobinger*, 563 So. 2d at 745. Plaintiffs’ claims here are typical of those of other class members because Plaintiffs’ personal information, like that of every other class member, was allegedly misused, disclosed and/or unsecured by UCF.

Fourth, and finally, the adequacy requirement is also satisfied. Adequacy “concerns the class representatives’ relationship with the class members to prevent choosing as representatives those who may have interests antagonistic to the class or a poor choice when another may be more fully qualified and who may prosecute more vigorously (this includes the qualification of the class

representatives' counsel as well)." *Id.* at 746. Here, Plaintiffs have no interests antagonistic to the Settlement Class they seek to represent and class counsel is experienced in litigating class action cases. Accordingly, the adequacy requirement is satisfied for purposes of approving the Settlement Agreement and conditionally certifying the Settlement Class.

B. The Rule 1.220(b) requirements are satisfied.

The parties propose that the Court preliminarily certify the Settlement Class pursuant to Rule 1.220(b)(1)(A) and 1.220(b)(2). Under Rule 1.220(b)(1)(A), "the prosecution of separate claims or defenses by or against individual members of the class would create a risk of . . . inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class." Fla. R. Civ. P. 1.220(b)(1)(A). Because Florida law has held that under Rule 1.220(b)(1)(A), "it is not enough that separate litigation may result in inconsistent adjudications," the adjudications must therefore impose "incompatible *standards of conduct* on the party opposing the class." *Seven Hills, Inc. v. Bentley*, 848 So. 2d 345, 354 (Fla. 1st DCA 2003) (emphasis added) (citation omitted). A class may also be certified pursuant to Rule 1.220(b)(2) "if the party opposing the class has acted or refused to act on grounds generally applicable to all class members, thereby making final injunctive or declaratory relief concerning the class as a whole appropriate." *Id.* at 352.

Here, certification under Rule 1.220(b)(1)(A) is appropriate where the prosecution of separate claims or defenses by individual members of the Settlement Class would create a risk of inconsistent or varying adjudications as different courts may impose on UCF different standards of conduct regarding UCF's collection, storage, and maintenance of its current or former students' and/or employees' personal information. This potential for inconsistencies could put UCF in the untenable "position of being unable to comply with one judgment without violating the terms of

another judgment,” *id.* at 354, and could “impair its ability to pursue a uniform continuing course of conduct,” *id.* at 353, in implementing changes to its information security practices and organization as set forth in the Settlement Agreement. Certification under Rule 1.220(b)(2) is likewise appropriate where Plaintiffs allege that UCF has generally failed to protect the personal information of the entire class, thereby making final injunctive relief concerning the class as a whole appropriate. Accordingly, the parties propose that the Settlement Class be certified under Rule 1.220(b)(1)(A) and 1.220(b)(2).

C. Notice Requirement

The proposed Settlement is sufficient to satisfy the notice requirements of Rule 1.220(d)(1) and the due process rights of the Settlement Class. The parties have agreed to provide notice to the Settlement Class via publication on UCF’s already-established data security incident webpage, <https://www.ucf.edu/datasecurity/>, *see* Exhibit B to Settlement (proposed Notice) & C (current webpage).

Under Rule 1.220(d), to certify a class, notice of the pendency of a claim or defense must generally be provided to each identified and located class member. The class member then has the option to opt out of the class. But Rule 1.220(d)(1) provides: “If the court rules that the claim or defense shall be maintained on behalf of a class under subdivision (b)(1) . . . , the order shall also provide for the notice required by subdivision (d)(2), *except when a showing is made that the notice is not required, the court may provide for another kind of notice to the class as is appropriate.*” (Emphasis added.) Because the parties propose that the Court certify the Settlement Class pursuant to Rule 1.220(b)(1)(A) and 1.220(b)(2), the parties suggest to notify class members by publication on UCF’s above-mentioned webpage as an appropriate form of notice under the circumstances of this Settlement.

*Joint Motion for Preliminary Approval of
Proposed Class Action Settlement
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Notice by this form of publication is particularly appropriate here given: (i) the nature of Plaintiffs' claims; (ii) that the defendant is a public entity; (iii) that the settlement contemplates only injunctive relief, which does not waive any Class Member's claims for damages, or provide a right to opt out of the class; and (iv) that UCF has already provided individual notice to all potential Settlement Class Members of the cyberattack. *See Seven Hills*, 848 So. 2d at 355 (quoting Fla. R. Civ. P. 1.220(d)(2) (“[N]otice required by subdivision (d)(2) contemplates class members’ rights to opt out of the class . . .”). Further, UCF has already been directing individuals to its data security webpage in order to provide details related to the cyberattack.

For the foregoing reasons, Plaintiffs respectfully request that the Court enter a preliminary order approving the Settlement and certifying the Settlement Class.

DATED this 22nd day of November, 2017.

/s/ John A. Yanchunis

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*Joint Motion for Preliminary Approval of
Proposed Class Action Settlement
Jeremiah Hughley et al. v. University of Central Florida*

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of November, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing and copy to:

Jerry R. Linscott
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/s/ John A. Yanchunis

John A. Yanchunis

EXHIBIT A

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

JEREMIAH HUGHLEY, ANTHONY
FURBUSH, LOGAN BERKOWITZ,
BENJAMIN HELLER, AND MAX
PALOMBO individually, and
on behalf of all others similarly
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Plaintiffs,

CASE NO.: 2016-CA-001654-O

v.

UNIVERSITY OF CENTRAL FLORIDA
BOARD OF TRUSTEES,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) is entered into by and between Plaintiffs Jeremiah Hughley, Anthony Furbush, Logan Berkowitz, Benjamin Heller, and Max Palombo, individually and on behalf of the Settlement Class (as defined below), and Defendant University of Central Florida Board of Trustees (“UCF”). This Settlement is being submitted pursuant to Florida Rule of Civil Procedure 1.220.

DEFINITIONS

a. “Action” means the case entitled *Hughley et al. v. University of Central Florida Board of Trustees*, Case No. 2016-CA-001654-O, pending in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

b. “Class Counsel” means the law firms of MORGAN & MORGAN COMPLEX LITIGATION GROUP; and EGGNATZ PASCUCCI, P.A., and any attorneys designated by any of these firms as necessary to assist in the representation of the Settlement Class in this Action.

- c. “Class Members” means “Settlement Class Members.”
- d. “Complaint” means Plaintiffs’ Amended Class Action Complaint filed March 28, 2017, in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.
- e. “Court” means the Ninth Judicial Circuit in and for Orange County, Florida.
- f. “Data Security Incident” refers to the factual allegations described in the Complaint.
- g. “Defendant’s Counsel” refers to the law firm Baker Hostetler LLP, and any attorneys designated by this firm as necessary to assist in the representation of the Defendant in this Action.
- h. “Effective Date” shall be the thirty-fifth (35th) day after the Court has entered final Judgment, if no appeal is filed. If an appeal is filed, the Effective Date shall be fourteen days (14) after the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmation is no longer subject to review or appeal.
- i. “Final Fairness Hearing” means the hearing in the Action for the Court to consider final approval of this Settlement and the entry of Judgment.
- j. “Judgment” means the final judgment and order of dismissal with prejudice to be entered in the Action in connection with the Settlement after the Final Fairness Hearing.
- k. “Named Plaintiffs” refers to Plaintiffs Jeremiah Hughley, Anthony Furbush, Logan Berkowitz, Benjamin Heller, and Max Palombo.
- l. “Notice” means the Notice of Proposed Class Action Settlement, Fairness Hearing, and Right to Appear to be published pursuant to the Preliminary Approval Order.
- m. “Parties” refers collectively to Plaintiffs, members of the Settlement Class, and Defendant.

- n. “Personally Identifying Information,” or “PII,” refers to an individual’s name in conjunction with other demographic identifiers that can be used to identify that individual, such as his or her social security number, UCF student identification number, and/or UCF employee identification number.
- o. “Preliminary Approval Order” means the Court’s order preliminarily approving Settlement and providing for Notice to the Class.
- p. “Released Parties” means UCF and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and insurers, present and former directors, officers, trustees, employees, agents, and attorneys.
- q. “Releasing Parties” means Plaintiffs and the Settlement Class Members and each of their executors, representatives, heirs, predecessors, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents, attorneys and assigns, and all those who claim through them or who may be authorized to assert claims on their behalf in connection with the subject Data Security Incident.
- r. “Settlement Class” or “Settlement Class Members” refers to all persons residing in the United States whose personal information was accessed in the cyberattack at UCF in early 2016. Excluded from this Class is any entity in which UCF has a controlling interest as well as successors and assigns of UCF. Also excluded are the judges and court personnel in this case and any members of their immediate families.
- s. “UCF” refers to Defendant University of Central Florida Board of Trustees.

SETTLEMENT TERMS

In consideration of the complete and final settlement of the Action, and under the terms and conditions herein, the Parties agree as follows:

INJUNCTIVE ASSURANCES

UCF gives the following assurances for the purpose of providing the Settlement Class Members with injunctive relief concerning UCF's information security practices, and its information security organization following the Data Security Incident.

(1) **Security Officer and Additional Personnel**

- a. UCF has promoted its Security Officer to be a direct report to the Vice President and Chief Information Officer.
- b. UCF has added three information security positions, including a Security Awareness Coordinator.

(2) **Data Risk Assessments**

- a. UCF has designated a full-time Internal Senior Information Security Auditor whose job function is to perform periodic audits and assessments. Specific duties of the Senior Information Security Auditor include: (i) periodic risk assessments that identify material internal and external risks to the security, possession, and use of UCF's present and former students and employees' PII that could result in unauthorized access to UCF's information data storage systems; and (ii) an assessment of the sufficiency of any safeguards in place to control these risks.
- b. UCF is subject to existing external state information security audits.

(3) **Vendor Management Program**

UCF has a vendor management program that includes specific contractual language requiring that vendors securely handle all UCF data.

(4) **Dynamic Security Program**

UCF's security program as modified after the Security Incident evaluates: (i) the results of testing and ongoing assessments performed by UCF and its IT staff; (ii) material changes to its operations and business arrangements; and (iii) improvements to technology and manners in which information is stored and maintained.

(5) **Security Enhancements**

a. **Multi-factor Authentication (MFA)**

UCF has implemented MFA. MFA increases user account security by requiring at login the entry of something the user knows (his/her login and password) in addition to something the user physically possesses (such as a smartphone app or a temporary token). MFA is being deployed in stages. On April 19, 2017, MFA was applied in UCF's business systems for all university employees. In order to access pages that display or allow changes to highly sensitive personal financial information, all users must utilize two-factor authentication. In September 2017, MFA was applied to all university business systems for employees who, by virtue of their job responsibilities, have access to the personal information of others.

b. **Network and system logging and analysis**

UCF has implemented technology to capture, analyze, and report on patterns of activity occurring in the data network and on key systems. If unusual activity is

detected, university information security staff are notified. Data captured can also be employed for forensic analysis.

c. **Enhanced email protection**

UCF has moved toward activating email protection technology that detects and neutralizes harmful Web links and harmful attachments in incoming email messages. UCF has implemented this technology for all employee and student email accounts.

d. **Business systems software firewall**

UCF added software to university business systems that increases visibility, reporting, and control of system activity by employees with privileged accounts.

(6) **External information security firm**

UCF has retained Verizon Incident Response, assuring that the firm's forensic and consulting services can be made available immediately if the need arises.

(7) **Extended identity theft protection**

12,191 university employees and students opted to subscribe to the free (insurance-covered) year of identity theft protection and remediation service offered in February 2016. In February 2017, UCF extended for an additional year this identity theft protection and remediation service at university expense for the 3,000 employees and students who were at that time employed by or attending the university.

(8) **Employee education**

a. UCF will implement online-user education training modules on information security topics such as phishing, malware, and other threats.

- b. UCF increased the number and frequency of advisory and informational email communications from the information security office to users with privileged business system accounts.
 - c. UCF added monthly meetings between university information security office personnel and information security leads in key university business offices. The agendas for these meetings include security project status reports, architectural standards, and updates on threats.
- (9) **Updated business systems security configurations**
- UCF retained consultants to assist with re-architecting employee ERP security profiles in order to ensure that individual employee security is matched specifically to the employee's current job responsibilities.
- (10) **University information security policies**
- UCF updated university policies relating to information security.
- (11) **Office of the Ombuds**
- The existing office of Ombuds at UCF will include within its scope of responsibilities the intake of inquiries from employees and students, current and former, arising from the Data Security Incident, including referrals to the Security Awareness Coordinator for inquiries related to protection of PII.
- (12) **Notification of material changes**
- For a period of one (1) year from the Effective Date of this Agreement, Defendants agree to notify Class Counsel of any material modifications to the policies and practices described in the Assurances described above.

(13) **Requests for Updates**

For a period of one (1) year from the Effective Date of this Agreement, Class Counsel shall have the right to make an affirmative written request to UCF to provide a status report on any of the Assurances listed above. Class Counsel shall make no more than two such requests during this period. UCF agrees to provide a detailed response to the written requests within sixty (60) days of receipt of the written request.

- (14) UCF estimates the total non-recurring costs to effectuate the above security enhancements to be \$845,467, and the total recurring costs to be \$1,006,835.

SERVICE AWARDS

- (15) UCF agrees not to oppose Plaintiffs' request for a service award to the Named Plaintiffs in an amount not to exceed \$500 each. This award is subject to the Court's approval and shall be paid by UCF within ten (10) business days of the Effective Date.

MEDIATION COSTS

- (16) UCF will pay the fee of the mediator and any other costs associated with the mediation of the Action.

SUBMISSION OF AGREEMENT AND PRELIMINARY APPROVAL AND ORDER

- (17) Immediately upon execution of this Settlement, Plaintiffs shall file in the Action an unopposed motion for preliminary approval. The motion shall attach this Settlement and request an Order:
- a. Approving preliminarily this Settlement;
 - b. Certifying the Action as a Class Action for settlement purposes only on behalf of the Settlement Class;

- c. Approving the form and method of Notice as fair, adequate, reasonable, and consonant with due process;
- d. Directing the Parties that within fourteen (14) days after the date on which an Order is entered preliminarily approving the Settlement, the relevant form of the Notice shall be posted to UCF's data security incident webpage for a period not less than ninety (90) days. *See* Exhibit B (Notice) and Exhibit C (UCF's data security webpage). The Order approving the Settlement shall find that this Notice is sufficient as is necessary to protect the interests of the Settlement Class and to satisfy the requirements of Rule 1.220, Fla. R. Civ. P., and due process;
- e. Asking that after Notice is given, a Final Fairness Hearing be held to determine the reasonableness, adequacy, and fairness of this Settlement and whether the Court should approve it and enter Judgment. At this hearing, Class Counsel will request that the Court approve the Named Plaintiffs' service award, which UCF will not oppose.
- f. Providing that any member of the Settlement Class who objects to the approval of the Settlement may appear at the Final Fairness Hearing and show cause why the Court should not approve the terms of the Settlement as fair, reasonable, and adequate, and why a judgment should not be entered. The Class Member must provide either written objections or a written petition to intervene in the Action that includes: (1) a statement of each objection being made or each ground for intervention; (2) a detailed description of the facts underlying each objection or each ground for intervention; (3) a detailed description of the legal authorities underlying each objection or each ground for intervention; (4) a list of witnesses, if

any, who may be called to testify at the Final Fairness Hearing, either live or by deposition or by affidavit; (5) a list of exhibits, if any, along with copies of the exhibits that the objecting party or intervenor may offer during the Final Fairness Hearing; (6) the Class Member's name, address, telephone number, and a statement of whether the Class Member, or his/her attorney, will ask to appear at the Final Fairness Hearing; and (7) proof that the objector or intervenor is a Class Member as defined in this Settlement. The objecting party or intervenor must file these documents with the Court and deliver them to Class Counsel and counsel for UCF no later than twenty-one (21) days before the date of the Final Fairness Hearing.

- g. Providing that no person shall be entitled in any way to contest the approval of the Settlement's terms and conditions or the judgment entered on the Settlement, except by filing and serving written objections in accordance with paragraph f *supra*, and that any Class Members who fail to object in the manner previously described shall be foreclosed forever from raising any objections to this Settlement, or asserting claims arising out of, relating to, based in whole or in part on any of the facts or matters alleged, or which could have been alleged, or which were otherwise at issue in the Action.
- h. Approving the award of attorneys' fees and costs in accordance with the provisions set forth in paragraphs 25-27 below.

NOTICE TO SETTLEMENT CLASS MEMBERS

- (18) The Parties have agreed that given the nature of the agreed-upon relief, notice in the form prescribed in Florida Rule of Civil Procedure 1.220(d)(2) is not required: "If the court rules that the claim or defense shall be maintained on behalf of a class under

- subdivision (b)(1) or subdivision (b)(2), the order shall also provide for the notice required by subdivision (d) (2), *except when a showing is made that notice is not required, the court may provide for another kind of notice to the class as is appropriate.*” Fla. R. Civ. P 1.220(d)(1) (Emphasis added.)
- (19) The Parties have agreed that notice by publication where the Assurances stated herein will be posted to UCF’s current data security incident webpage, is appropriate given: (i) the nature of the claims in this case against a public entity; (ii) the costs of notifying the Class Members individually; (iii) that UCF has already provided notice to all potential Settlement Class Members of the cyberattack; and (iv) the agreed-upon injunctive relief, which does not provide a feasible way for a Class Member to opt out of the class and does not release potential damages claims.
- (20) The Notice to Settlement Class Members is subject to the Court’s approval as satisfying the requirements of 1.220(d)(1) and (e).

FINAL FAIRNESS HEARING

- (21) The Final Fairness Hearing to determine the reasonableness, adequacy, and fairness of the Settlement will be scheduled at the Court’s convenience after publication of the Notice for at least 90 days.
- (22) The Parties shall jointly request that the Court review any petitions to intervene or any objections to the Settlement that have been timely filed in compliance with 17.f and conduct any other proceedings as the Court deems appropriate under the circumstances.
- (23) Any Class Member who retains an attorney to prepare a written objection, to intervene, and/or who intends to appear at the Final Fairness Hearing through counsel must comply with the requirements set forth in paragraph 17.f above and must include in the

submitted papers: (i) the attorney's experience with class actions, including the extent to which the attorney participated in each class action; (ii) a detailed description of each previous representation of an objector in a class action, if any, and each case's outcome; and (iii) an attestation from the objecting party that he/she discussed the objection with his/her attorneys and understands the objection.

- (24) Notwithstanding any objections, the Parties will jointly move the Court to enter an Order and Final Judgment, which includes, among others:
- a. An approval, without material alteration, of the proposed settlement, pursuant to the Settlement's terms;
 - b. A finding that the Settlement's terms are fair, reasonable, and adequate to the Settlement Class;
 - c. A finding that the Settlement does not require an opt-out provision and that each Class Member is therefore bound by the Settlement;
 - d. A finding that the publishing of Notice on UCF's data security incident webpage satisfies the requirements of Rule 1.220(d), Fla. R. Civ. P., and the requirements of due process;
 - e. An approval of the service awards to the Named Plaintiffs;
 - f. An approval of the amount of attorneys' fees and costs to be paid to Class Counsel as set forth in paragraphs 25-27 of this Settlement;
 - g. A dismissal of all claims made in this Action as to the Settlement Class on the merits, with prejudice, and an order entering final Judgment thereon with a finding that there is no just reason to delay enforcement or appeal;

- h. An order retaining jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement.

ATTORNEYS' FEES AND COSTS

- (25) The Agreement includes a provision for an award of attorneys' fees and costs to Class Counsel. Subject to the entry of a final order approving the Settlement, UCF shall pay the sum of \$64,200, inclusive of attorneys' fees and costs, to Class Counsel, or such amount allowed by the Court in the final order and judgment and decree. UCF will pay this amount within ten (10) business days after the Effective Date.
- (26) The \$64,200 fee shall constitute the entire fee that UCF will pay Class Counsel for work relating to this Action and this Settlement, including but not limited to pre-suit investigation, litigating and conducting discovery in the Action, negotiating and entering into the Settlement, responding to any objectors or intervenors, and any appeals relating to the Settlement, or otherwise in this case.
- (27) Counsel for both Parties expressly agree that no party to this Settlement intends that this Section, or any part of this Settlement, establishes or acknowledges that anyone is entitled to or has the right to attorneys' fees other than as a part of this Settlement and as specifically stated herein, and that neither this Section nor any other term of this Settlement creates any entitlement to attorneys' fees.

NO ADMISSION OF LIABILITY

- (28) UCF expressly denies any and all liability in this Action, and by entering into this Settlement, UCF is not admitting any liability whatsoever to Plaintiffs, Class Members, or any other person or entity. Nor does UCF, by entering into this Settlement, admit that any of the allegations in the Action are true. UCF does not waive any claim,

counterclaim, defense, or affirmative defense except to the extent otherwise expressly provided by this Settlement.

RELEASE

- (29) As of the Effective Date, the Plaintiffs and the Settlement Class shall be deemed to have fully released and forever discharged UCF only from any and all injunctive and/or declaratory rights, claims, liabilities, action; causes of action; costs and attorneys' fees other than as described in this Settlement; demands; remedies, known or unknown; legal, statutory, declaratory or equitable, that the Parties ever had, now have, or may have in the future that result from, arise out of, are based upon, or relate to in any way the conduct, omissions, duties or matters alleged or that could have been alleged in the Complaint.
- (30) Plaintiffs and other Class Members may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released pursuant to the terms of paragraph 29 above, or the applicable law to such claims may change. Still, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have waived and fully, finally, and forever settled and released any known or unknown; suspected or asserted or unasserted; liquated or unliquated; contingent or non-contingent claims with respect to all of the matters described in or subsumed by this paragraph and paragraph 29. Each Party, including Class Members, agrees and acknowledges that it shall be bound by this Agreement, and that all of their claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if any Party never receives actual notice of the Agreement.

- (31) Each Releasing Party agrees not to prosecute and to immediately withdraw, with prejudice, any equitable or legal proceeding against any Released Party with respect to any of the claims released by this Settlement or any of the actions taken by a Released Party that are authorized or required by this Settlement. The Court shall retain jurisdiction to enforce the Judgment, releases, and agreements contemplated by this Settlement and the Judgment.

VERIFICATION

- (32) Class Counsel shall be entitled to verify, at its own expense, that UCF has complied with the terms of this Settlement. The verification period shall begin as of the Effective Date set forth in this Settlement and shall last for one year. UCF shall cooperate in good faith to facilitate the verification process. Verification may occur in the form of a letter from UCF in which it describes its compliance with the Settlement and provides supporting materials. UCF may designate any confidential materials provided to Class Counsel as “confidential” and, in such case, shall be maintained in confidence by Class Counsel and returned to UCF no later than when the verification period expires.

TERMINATION OF SETTLEMENT

- (33) This Settlement shall be conditioned on the occurrence of all of the following events:
- a. The Court enters the preliminary order as required by paragraph 17;
 - b. The Court enters the Final Judgment as to the Settlement Class, or a judgment substantially in the form set forth in paragraph 24;
 - c. The Judgment becomes final as to the Settlement Class;
 - d. UCF pays to Class Counsel the attorneys’ fees and expenses awarded by the Court in accordance with paragraphs 25-27; and

- e. The payments to the Named Plaintiffs have been paid as provided in paragraph 154.
- (34) If all the above conditions are not met, this Settlement shall be cancelled and terminated.
- (35) If the Court does not approve the Settlement, or it is approved but reversed on appeal, the Parties shall be restored to their respective positions in this Action as of the date of filing the motion for preliminary approval of the Settlement. In which case, the Agreement shall have no further force or effect concerning the Parties and shall not be used in the Action or in any other proceeding for any purpose. Any judgment or order entered by the Court in accordance with the terms of the Agreement shall be treated as vacated. However, no court order, modification, or reversal on appeal of an order regarding a reduction in the amount of attorneys' fees and expenses awarded to Class Counsel or the service awards shall constitute grounds for cancellation or termination of the Settlement.

OTHER PROVISIONS

- (36) All matters that are not expressly covered by the provisions of this Settlement shall be resolved by agreement of Class Counsel and counsel for UCF, or if they cannot agree, by the Court.
- (37) The Settlement shall be binding upon the Parties. Nothing in this Settlement is intended to create any legally enforceable rights in any other person or to make any other person a beneficiary of this Settlement.
- (38) Unless the Settlement expressly states otherwise, it shall not be amended, modified, or supplemented, nor shall any of its provisions be waived, unless by written agreement with signatures from Class Counsel and counsel for UCF.

- (39) The Settlement represents the entire and sole agreement among the Parties.
- (40) This Settlement may be executed in counterparts, each of which shall be considered an original and all of which will be considered one and the same instrument.
- (41) Florida law shall govern this Settlement and any documents prepared or executed pursuant to this Settlement.
- (42) The service of papers and notices under this Settlement shall be made upon the Plaintiffs and members of the Settlement Class by serving the papers on:

John A. Yanchunis
MORGAN & MORGAN
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602

Michael J. Pascucci, Esq.
Joshua H. Eggnatz, Esq.
EGGNATZ PASCUCCI, P.A.
5400 S. University Drive, Ste. 417
Davie, FL 33328

And upon UCF by serving the papers on:

Jerry R. Linscott
BAKER HOSTETLER LLP
SunTrust Center, Suite 2300
200 South Orange Avenue
Orlando, FL 32801-3432

Paul G. Karlsgodt
Casie D. Collignon
BAKER HOSTETLER LLP
1801 California Street, Suite 4400
Denver, CO 80202-2662

EXECUTION

- (43) The undersigned, being duly authorized, have cause this Settlement to be executed on the dates shown below and agree that it shall take effect on the date on which it has been executed by all the undersigned.

/s/ John A. Yanchunis
John A. Yanchunis, Esq.
Class Counsel and Counsel for Plaintiffs

11/22/2017
Date

/s/ Michael. J. Pascucci
Michael J. Pascucci, Esq.
Class Counsel and Counsel for Plaintiffs

11/22/2017
Date

/s/ Joshua H. Eggnatz
Joshua H. Eggnatz, Esq.
Class Counsel and Counsel for Plaintiffs

11/22/2017
Date

/s/ Melissa R. Emert
Melissa R. Emert, Esq.
Class Counsel and Counsel for Plaintiffs

11/22/2017
Date

/s/ Jeremiah Hughley
Jeremiah Hughley
Plaintiff

11/22/2017
Date

/s/ Anthony Furbush
Anthony Furbush
Plaintiff

11/22/2017
Date

/s/ Logan Berkowitz
Logan Berkowitz
Plaintiff

11/22/2017
Date

Benjamin Heller
Plaintiff

Date

Max Palombo
Plaintiff

Date

John A. Yanchunis, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Michael J. Pascucci, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Joshua H. Eggnatz, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Melissa R. Emert, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Jeremiah Hughley
Plaintiff


Date

Anthony Furbush
Plaintiff

Date

Logan Berkowitz
Plaintiff

Date



Benjamin Heller
Plaintiff



Date

Max Palombo
Plaintiff

Date

John A. Yanchunis, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Michael J. Pascucci, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Joshua H. Eggatz, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Melissa R. Emert, Esq.
Class Counsel and Counsel for Plaintiffs

Date

Jeremiah Hughley
Plaintiff

Date

Anthony Furbush
Plaintiff


Date

Logan Berkowitz
Plaintiff

Date

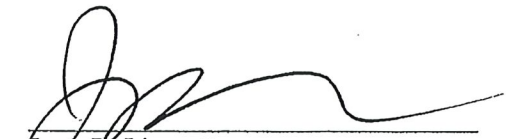
Benjamin Heller
Plaintiff

Date



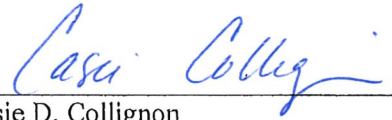
Max Palombo
Plaintiff

Date



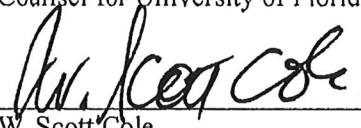
Jerry R. Linscott
Counsel for University of Florida Board of Trustees

11/17/2017
Date



Casie D. Collignon
Counsel for University of Florida Board of Trustees

11/17/17
Date



W. Scott Cole
University of Florida Board of Trustees
Vice President and General Counsel

11/17/17
Date

EXHIBIT B

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

JEREMIAH HUGHLEY, ANTHONY
FURBUSH, LOGAN BERKOWITZ,
BENJAMIN HELLER, AND MAX
PALOMBO individually, and
on behalf of all others similarly
situated,

Plaintiffs,

CASE NO.: 2016-CA-001654-O

v.

UNIVERSITY OF CENTRAL FLORIDA
BOARD OF TRUSTEES,

Defendant.

**(PROPOSED) ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT AND CERTIFYING SETTLEMENT CLASS**

THIS CAUSE came before the Court on the Unopposed Motion for Certification of a Settlement Class and Preliminary Approval of Proposed Class Action Settlement (“Motion”) by Plaintiffs Jeremiah Hughley, Anthony Furbush, Logan Berkowitz, Benjamin Heller, and Max Palombo (“Plaintiffs”).

CLASS SETTLEMENT APPROVAL PROCESS

Rule 1.220(e) of the Florida Rules of Civil Procedure requires judicial approval of any settlement agreement in a class action. *See Fla R. Civ. P. 1.220(e)*. The approval of a class action settlement is a two-step process. First, the Court must determine whether the proposed settlement deserves approval. *See Manual for Complex Litigation*, Third, § 30.41, at 236-37 (1995). Second, after notice, the Court must determine whether final approval is warranted. *Id.* Courts may not approve class action settlements in reverse, by first determining that the settlement is fair, and thereby finding that certification is proper. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 622

(1997). Accordingly, in granting preliminary approval, courts typically certify the class for settlement purposes, and then consider the fairness of the settlement at the final hearing. *E.g.*, *Denney v. Jenkins & Gilchrist*, 2005 WL 388562 (S.D.N.Y. 2005). Prior to conducting a fairness hearing, a court “must conduct a rigorous analysis to determine whether the elements of class action requirements have been met,” which requires “heightened scrutiny” when the parties seek “certification of the class and approval of their settlements simultaneously.” *Grosso v. Fidelity National Title Ins. Co.*, 983 So.2d 1165, 1170 (Fla. 3d DCA 2008).

To certify a class action for settlement purposes, a court must find that all of the requirements of Rule 1.220(a), Fla. R. Civ. P., and at least one subdivision of Rule 1.220(b), are satisfied. *See Amchem*, 521 U.S. at 620-21; *see also Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 228-29 (D.N.J. 2005) (explaining that a settlement class must satisfy the requirements of numerosity, commonality, typicality, and adequacy of representation, as well as predominance and superiority).

The Court has considered the Motion, the record, Counsel’s representations to-date, and the Plaintiffs’ and UCF’s Settlement Agreement (“Agreement”), dated as of [DATE], 2017, (attached hereto as Exhibit A). Based on these arguments and submissions, the Court hereby sets forth the following findings of fact and conclusions of law upon which this Order is based.

I. FINDINGS OF FACT

UCF is a preeminent research university located in Orlando, Florida. UCF is one of the largest universities in the United States with more than 66,000 students. In or around early February of 2016, UCF discovered that it had been the victim of a cyberattack (the “Security Incident”). By accessing UCF’s computer network, criminals may have accessed information pertaining to approximately 63,000 current and former UCF students and/or employees. After

UCF announced that it had discovered the intrusion into its computer system, it mailed notifications to the individuals it believed may have been affected.

Plaintiffs subsequently brought this consolidated action individually and on behalf of state- and nationwide classes in the Circuit Court of the Ninth Judicial Circuit in and for Orange County seeking damages from UCF. Each alleges that he “contacted UCF and was informed” that his personal information was compromised in the Security Incident. Compl. ¶¶ 6-10.

Plaintiffs brought five claims against UCF for breach of contract, negligence, negligence per se, and alleged violations of Florida’s Deceptive and Unfair Trade Practices Act and education code regarding compliance with the federal Family Educational Rights and Privacy Act. UCF denies any wrongdoing or liability for Plaintiffs’ allegations.

II. CONCLUSIONS OF LAW

Based upon the Settlement Agreement entered into by Plaintiffs and UCF, UCF’s withdrawal of its defenses and objections to class certification solely for purposes of this class certification settlement, and the Court’s review of the Settlement Agreement and the presentations by counsel at the hearing on Plaintiffs’ Motion, the Court hereby preliminarily approves the Settlement Agreement dated as of [DATE], 2017, as fair, adequate, and reasonable, and preliminarily certifies the following settlement class:

All persons residing in the United States whose personal information was accessed during a cyberattack at UCF in early 2016.

Excluded from this Class is any entity in which UCF has a controlling interest as well as successors and assigns of UCF. Also excluded are the judges and court personnel in this case and any members of their immediate families.

A. Numerosity, Fla. R. Civ. P. 1220(a)(1)

Numerosity is satisfied on this record because joinder of more than 63,000 persons into a single action would be impracticable. *See Estate of Bobinger v. Deltona Corp.*, 563 So. 2d 739, 742 (Fla. 2d DCA 1990) (noting that numerosity requires “specifying the approximate number in the class” and that the proposed class of over 400 persons was sufficiently numerous).

B. Commonality, Fla. R. Civ. P. 1220(a)(2) and (b)(3)

The Court finds that the commonality requirement is satisfied, for purposes of approving the Settlement Agreement and conditionally certifying the Settlement Class in that all members of the class are current or former students and/or employees of UCF whose personal information was accessed without authorization at UCF in early 2016. Commonality is satisfied where “the claim of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim of each member in the class.” *Bouchard Transp. Co. v. Updegraff*, 807 So. 2d 768, 771 (Fla. 2d DCA 2002) (“The class of residential property owners whose property was physically invaded by the pollution meets the test of commonality and predominance.”). Their personal information was collected and stored at and by UCF.

Accordingly, the Court finds that Plaintiffs’ and the Settlement Class’ claims arise from a common course of conduct and each shares a common interest in obtaining injunctive relief from UCF as it relates to how UCF collects, stores, and protects electronic files that contain the personal information of its current and former students and/or employees. These commonalities satisfy the requirement for the purpose of preliminarily approving the Settlement Agreement and certifying the Settlement Class.

C. Typicality, Fla. R. Civ. P. 1.220(a)(3)

The Court finds that the typicality requirement is satisfied for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class based on the similarity of Plaintiffs' claims with those of the Settlement Class. A common course of action by the defendant against the purported class and class representatives suffices to show typicality. *See Bobinger*, 563 So. 2d at 745. Plaintiffs' claims are typical of those of other class members because Plaintiffs, like that of every other class member, allege that UCF unlawfully disclosed their personal information.

D. Adequacy, Fla. R. Civ. P. 1.220(a)(4)

The Court finds that Plaintiffs have no interests antagonistic to the Class they seek to represent and that Class Counsel is experienced in litigating class action cases. *See id.* at 746. Accordingly, the adequacy requirement is satisfied for purposes of approving the Settlement Agreement and conditionally certifying the Settlement Class.

E. Rule 1.220(b) Requirements

The Court also finds that the requirements of Rule 1.220(b)(1)(A) and 1.220(b)(2) have been satisfied for the purposes of approving the Settlement Agreement and certifying the Settlement Class. In particular, the Court, in its review of the factual record, finds that "the prosecution of separate claims or defenses by or against individual members of the class would create a risk of . . . inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class." Fla. R. Civ. P. 1.220(b)(1)(A). Florida law interprets this rule to mean that "it is not enough that separate litigation may result in inconsistent adjudications." Rather, the Rule explicitly requires that such adjudication impose "incompatible *standards of conduct* on the party opposing the class."

Seven Hills, Inc. v. Bentley, 848 So. 2d 345, 354 (Fla. 1st DCA 2003) (emphasis added) (citation omitted). The Court finds here that the prosecution of separate claims or defenses by individual members of the class would create a risk of inconsistent or varying adjudications as different courts may impose on UCF different standards of conduct regarding UCF's collection, storage, and maintenance of its current or former students' and/or employees' personal information. This potential for inconsistencies could put UCF in the untenable "position of being unable to comply with one judgment without violating the terms of another judgment," *id.* at 354, and could potentially "impair its ability to pursue a uniform continuing course of conduct," *id.* at 353, in implementing changes to its information security practices and organization as agreed to in the Settlement Agreement. The Court also finds that certification under Rule 1.220(b)(2) is appropriate where Plaintiffs allege that UCF has failed to protect the personal information of the entire class, making final injunctive relief concerning the class as a whole appropriate.

Accordingly, the Court finds that the Settlement Class may be certified under Rule 1.220(b)(1)(A) and 1.220(b)(2).

F. Notice Requirement

The Court finds that the parties' agreement to provide notice via publication onto UCF's website is sufficient to satisfy the notice requirements of Rule 1.220(d)(1) and the due process rights of the Settlement Class. Generally, Florida's notice requirements instruct courts that certify a class to order that each identified and located class member be provided notice of the pendency of a claim or defense. Fla. R. Civ. P. 1.220(d). The rule likewise requires that each class member be given an opportunity to opt out.

However, Rule 1.220(d)(1) provides: "If the court rules that the claim or defense shall be maintained on behalf of a class under subdivision (b)(1) or (b)(2) , the order shall also provide for

the notice required by subdivision (d)(2), *except when a showing is made that the notice is not required, the court may provide for another kind of notice to the class as is appropriate.*” (Emphasis added.) Because the Settlement Class is being certified pursuant to Rule 1.220(b)(1)(A) and 1.220(b)(2), the Court finds that the parties’ agreement to notify class members by publication on UCF’s website is an appropriate form of notice under the circumstances of this settlement where Class Members are not receiving any damages or monetary award under the Settlement Agreement. Furthermore, where UCF is a public entity and individual notice would be especially cost-prohibitive, the Court finds that notice by publication on UCF’s already-established webpage for this incident, <https://www.edu/datasecurity/>, is appropriate.

The Court also finds that because the Settlement contemplates only injunctive relief, there is no right to opt out of the class, and thus, there is no need to provide class members with individual notice of a right to opt out. *See Seven Hills*, 848 So. 2d at 355 (quoting Fla. R. Civ. P. 1.220(d)(2) (“[N]otice required by subdivision (d)(2) contemplates class members’ rights to opt out of the class . . .”).

NOW, THEREFORE, IT IS HEREBY ORDERED this _____ day of _____
2017 that:

1. The Court hereby appoints Jeremiah Hughley, Anthony Furbush, Logan Berkowitz, Benjamin Heller, and Max Palombo as class representatives of the Settlement Class, and appoints John Yanchunis of Morgan & Morgan and Michael Pascucci and Joshua Eggatz of Eggatz Pascucci, P.A., as Counsel for the Settlement Class.
2. A hearing (the “Final Fairness Hearing”) is hereby scheduled to be held before the Court on [No less than 105 days from the date of this Order] (Month) _____ (Day)

_____, 2017, at (Time) _____ a.m./p.m., or as soon thereafter as may be heard, for the following purposes:

- a. To determine whether the proposed Settlement is fair, reasonable, adequate, and in the Settlement Class's best interests, and whether the Settlement should be finally approved by the Court;
 - b. To determine whether Final Judgment as provided under the Settlement Agreement should be entered dismissing the Amended Class Action Complaint with prejudice; and to determine whether releases should be provided to the Released Parties as defined and set forth in the Settlement Agreement;
 - c. To consider whether to provide service awards to each of the Named Plaintiffs as set forth in the Settlement Agreement;
 - d. To consider whether to award Class Counsel's fees and costs as set forth in the Settlement Agreement; and
 - e. To rule upon such other matters as the Court may deem appropriate.
3. The parties shall submit a Joint Motion for Entry of Final Orders Approving Settlement and Certifying Class within thirty (30) days of the date of this Order and indicate whether the proposed Settlement is fair, reasonable, adequate, and in the Settlement Class's best interests, and whether the Settlement should be finally approved by the Court.
- Plaintiffs shall submit an unopposed Motion for Award of Attorneys' Fees, Costs, and Service Awards no later than fourteen (14) days prior to the Final Fairness Hearing.
4. The Court approves the form, substance, and requirements of the Notice of Proposed Class Action Settlement Fairness Hearing, and Right to Appear (the "Notice") attached to the Motion, and UCF shall cause the Notice, substantially in the form set forth therein, to be

posted on its current data security incident webpage within fourteen (14) days after the entry of this Order.

5. The form of the Notice, and method set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of the Florida Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.
6. Class Counsel is authorized to act on behalf of the Settlement Class with respect to all acts required by the Settlement Agreement or such other acts that are reasonably necessary to consummate the proposed settlement set forth in the Agreement.
7. All litigation, including discovery, other than further proceedings with respect to the Settlement, is stayed until further order of this Court.
8. Any Settlement Class Member may appear and show cause why the proposed settlement of the Action embodied in the Settlement Agreement should not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered thereon, or why the service award to the Named Plaintiffs in this Action should not be made, or why fees inclusive of the costs should not be awarded as provided in the Settlement Agreement; provided, however, that no Settlement Class Member or any other Person, shall be heard or entitled to contest the approval of the proposed Settlement, or, if approved, the Judgment to be entered thereon, unless on or before twenty-one (21) days before the Fairness Hearing, that person has caused to be filed written objections or a petition to intervene in the manner and form outlined in the Settlement Agreement, stating all supporting bases and reasons with the Clerk of Circuit Court:

Clerk of Circuit Court
Civil Division
Orange County Courthouse
425 N. Orange Avenue
Orlando, Florida 32801

and has served copies of all such papers at the same time upon the following by first-class mail, in accordance with the requirements of the Settlement Agreement, to:

Class Counsel

John A. Yanchunis
MORGAN & MORGAN
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602

Michael J. Pascucci, Esq.
Joshua H. Eggnatz, Esq.
EGGNATZ PASCUCCI, P.A.
5400 S. University Drive, Ste. 417
Davie, FL 33328

Counsel for UCF

Jerry R. Linscott
SunTrust Center, Suite 2300
200 South Orange Avenue
Orlando, FL 32801

Paul G. Karlsgodt
Casie D. Collignon
1801 California Street, Suite 4400
Denver, CO 80202

9. For the objection to be considered by the Court, an objecting party's attendance at the Final Fairness Hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement are required to indicate in their written objection or petition to intervene their intention to appear at the hearing. All written objections shall conform to the requirements of the Settlement Agreement and shall indicate the basis upon which the person submitting the objections claims to be a member

of the Settlement Class and shall clearly identify any and all witnesses, documents, and other evidence of any kind that are to be presented at the Final Fairness Hearing in connection with such objections and shall further set forth the substance of any testimony to be given by such witnesses.

10. Any Settlement Class Member who does not make his, her, or its objection in the manner provided in the preceding paragraph of this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objections to the fairness, adequacy, or reasonableness of the Settlement.

11. Subject to the entry of a final order approving the Settlement Agreement at the Final Fairness Hearing and the time for all appeals of that order having expired, or, if an appeal is timely taken, the Order is affirmed on appeal and the time for any further appeal has expired, UCF will pay \$64,200 to Class Counsel, inclusive of their fees and costs in representing the Class in this litigation, and will pay \$500 as a service award to each of the Named Plaintiffs for their services as the named plaintiffs in this Action as set forth in the Settlement Agreement.

DONE AND ORDERED in Chambers in Orange County, Florida this ____ day of
_____ 2017.

The Honorable John E. Jordan

Copies to:

John A. Yanchunis
Michael J. Pascucci
Melissa R. Emert
Jerry R. Linscott
Paul G. Karlsgodt
Casie D. Collignon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order has been furnished using the Court's

ECF system to the following counsel:

John A. Yanchunis
Marcio W. Valladares
Patrick A. Barthle, II
MORGAN & MORGAN
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602

Joshua H. Eggnatz, Esq.
Michael J. Pascucci, Esq.
EGGNATZ, LOPATIN & PASCUCCI, LLP
5400 S. University Drive, Ste. 417
Davie, FL 33328

Melissa R. Emert, Esq.
Patrick K. Slyne, Esq.
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017

Jerry R. Linscott
SunTrust Center, Suite 2300
200 South Orange Avenue
Orlando, FL 32801

Paul G. Karlsgodt
Casie D. Collignon
1801 California Street, Suite 4400
Denver, CO 80202