

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

MICHAEL W. TILLEMAN,

Individually and on behalf and all others similarly situated,

Plaintiff,

v.

LEAFFILTER NORTH, LLC and

LEAFFILTER NORTH OF TEXAS, LLC

Defendants.

**NOTICE REGARDING RIGHT TO BENEFIT FROM
CLASS ACTION SETTLEMENT**

A Settlement Agreement has been reached in a class action lawsuit alleging that that LeafFilter North, LLC and LeafFilter North of Texas, LLC (referred to collectively as “LeafFilter” or “Defendants”) experienced an unauthorized intrusion into three LeafFilter employee email accounts as the result of a phishing incident between April 1 and August 21, 2018 during which time certain personally identifying information was accessed or viewed (“Lawsuit”). The information accessed or viewed may have included some combination of a person’s social security number, bank account number, payment card number and card expiration date(s), external card security code, driver’s license number, or social insurance number for persons in Canada (“The Incident”). If you have been affected by the unauthorized access you may be entitled to payment under the Settlement Agreement reached in the case.

As part of this Settlement, LeafFilter has agreed to pay certain types of claims for all Class Members, provide enrollment in an identity theft protection service, and undertake certain preventative cyber security measures.

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU
ACT OR DON’T ACT, SO READ THIS NOTICE CAREFULLY.**

| YOUR OPTIONS | |
|--|---|
| SUBMIT A CLAIM FORM DEADLINE: <u>NOVEMBER 5, 2019</u> | Complete and submit a Claim Form and receive compensation. By completing and submitting a timely and valid Claim Form you may recover money or additional credit monitoring and identity theft protection. |
| ASK TO BE EXCLUDED DEADLINE: <u>SEPTEMBER 6, 2019</u> | Get out of this Lawsuit and get no benefits from it. Instead of submitting a Claim Form, you may ask to be excluded from the Lawsuit (i.e., opt out). By excluding yourself, you cannot recover as part of this settlement and you keep a right to sue on your own. |
| OBJECT DEADLINE: <u>SEPTEMBER 6, 2019</u> | Object to the terms of the Settlement. You may object to the terms of the Settlement and have your objections heard at the November 25, 2019 Final Approval Hearing. |
| DO NOTHING | You will not receive any compensation and you will give up your rights to sue LeafFilter about the issues raised in this case. |

1. What is this Lawsuit about?

In the Lawsuit, Plaintiffs have brought claims against LeafFilter for: (1) negligence; (2) negligence per se; (3) breach of implied contract; and (4) injunctive/declaratory relief, all related to The Incident.

LeafFilter denies any wrongdoing and denies all claims asserted against it in the Lawsuit.

Both sides have agreed to settle the Lawsuit to avoid the cost, delay, and uncertainty of litigation.

You can read Plaintiff’s Complaint, the Settlement Agreement, other case documents, and submit a Claim Form at www.ConsumerProductSettlement.com.

2. Why is this a class action?

In a class action, Class Representative Michael W. Tilleman, sued on behalf of a group (or a “Class”) of people (“Class Members”). Here, the Class Representative sued on behalf of people who have similar claims regarding The Incident.

3. Why is there a settlement?

To avoid the cost, risk, and delay of litigation, the Parties reached a Settlement Agreement as to the claims asserted by Plaintiff and the Class.

4. How do I know if I am a part of the settlement?

For settlement purposes, the Court has certified a Class consisting of all people who meet the following definition:

All persons whose personal identifying information was potentially compromised by unauthorized persons as a result of a phishing incident discovered by LeafFilter on or before August 21, 2018, specifically excluding: (i) officers, directors, members, shareholders, and board members of LeafFilter and/or its related entities; (ii) all Settlement Class Members who timely and validly request exclusion from and/or opt-out of the Settlement Class; (iii) the Judge or Magistrate Judge to whom the action is assigned and, any member of those Judges' staffs or immediate family members; and (vi) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of The Incident or who pleads nolo contendere to any such charge.

5. What relief is available to Class Members and how do I receive benefits?

To obtain a recovery, you must submit a Claim Form. This is the only way to get a payment. Class Members who submit a valid and timely Claim Form may be entitled to the benefits enumerated below. Class Members may choose all applicable Claim categories. However, Class Members may seek reimbursement for each hour of lost time only once, regardless whether the time was spent dealing with issues in multiple Claim categories simultaneously. For purposes of any claim for reimbursement for lost time, the claimant must have spent at least one hour before being entitled to claim one or more hours of time.

- 1) **Identity Theft Protection:** Class Members may sign up for 24 months of Experian's IdentityWorks service, which is the same service initially offered by LeafFilter in response to the The Incident. This benefit is in addition to the IdentityWorks service that was made available to all members of the Settlement Class who previously enrolled. Any member of the Settlement Class who did not previously enroll in Experian's IdentityWorks service will be given the opportunity to enroll for a period of 24 months.
- 2) **Compensation to Settlement Class Members:** Class Members may receive monetary relief by filing a Claim Form and choosing all applicable categories under Group A or Group B below.

Group A: Settlement Class Members who **HAVE NOT**, as of the time they submit their claim to the Settlement Administrator, experienced identity theft or other fraud or misuse of their personally identifiable information shall be entitled to receive the following:

- A. **Lost Time:** Compensation for lost time of at least one (1) hour and up to four (4) hours at the rate of \$22.00 per hour, provided that the claimant provides documentation or a narrative explanation plausibly establishing that the time was spent dealing with issues relating to The Incident; and
- B. **Reimbursement of Costs:** Reimbursement for out-of-pocket costs to mitigate or prevent damage due to The Incident of up to \$275.00 per person, including:
 1. Costs associated with credit monitoring or identity theft insurance purchased directly by the claimant, provided that the product was purchased primarily as a result of The Incident;
 2. Costs associated with requesting a credit report, provided that the claimant requested the report primarily as a result of The Incident;
 3. Costs associated with a credit freeze, provided that the claimant requested the freeze primarily as a result of The Incident;
 4. Costs associated with cancelling a payment card and/or obtaining a replacement payment card, provided that the claimant requested the cancellation and/or replacement primarily as a result of The Incident;
 5. Costs associated with closing a bank account and/or opening a new bank account, provided that the claimant requested the closing and/or opening primarily as a result of The Incident; and
 6. Postage, long-distance phone charges, express mail, and other incidental expenses, provided that the claimant provides documentation of the charges and an explanation of their relationship to The Incident.

Group B: Settlement Class Members who **HAVE**, as of the time they submit their claim to the Settlement Administrator, experienced identity theft or other fraud or misuse of their personally identifiable information shall be entitled to receive the following:

- A. **Lost Time:** Compensation for lost time of at least one (1) hour and up to ten (10) hours at the rate of \$22.00 per hour, provided that the claimant provides documentation if time spent exceeds four (4) hours or, if no documentation is available, a narrative explanation plausibly establishing that the time was spent dealing with issues relating to The Incident, identity theft, fraud or other misuse of personally identifiable information ("PII"); and
- B. **Reimbursement of Costs:** Reimbursement for out-of-pocket costs to discover, mitigate or prevent damage due to The Incident and losses associated with identity theft, fraud, and other actual misuse of PII up to \$7,500 per person, including but not limited to:
 - 1. Costs associated with credit monitoring or identity theft insurance purchased directly by the claimant, provided that the product was purchased primarily as a result of The Incident;
 - 2. Costs associated with requesting a credit report, provided that the claimant requested the report primarily as a result of The Incident;
 - 3. Costs associated with a credit freeze, provided that the claimant requested the freeze primarily as a result of The Incident;
 - 4. Costs associated with cancelling a payment card and/or obtaining a replacement payment card, provided that the claimant requested the cancellation and/or replacement primarily as a result of The Incident;
 - 5. Costs associated with closing a bank account and/or opening a new bank account, provided that the claimant requested the closing and/or opening primarily as a result of The Incident;
 - 6. Postage, long-distance phone charges, express mail and other incidental expenses, provided that the claimant provides documentation of the charges and an explanation of their relationship to The Incident;
 - 7. Overdraft and/or overdraft protection fees, provided that the fees were incurred as a result of The Incident;
 - 8. Late and/or missed payment fees and/or charges, provided that the fees and/or charges were incurred as a result of The Incident;
 - 9. The increase in interest on credit cards or other loans caused by a late or missed payment that was a result of The Incident; and
 - 10. Damage to credit and costs associated with a decreased credit score if plausibly the result of The Incident.

Claims Process: Settlement Class Members are required to complete and submit a Claim Form (either by mailing it to the Settlement Administrator or completing an electronic form on the settlement website) to obtain the compensation described in Group A or Group B under "Compensation to Settlement Class Members" above. The Claim Form will require the claimant to provide the following information:

- a. Full name, address, and telephone number;
- b. Claimants will be required to attest or provide a declaration as to:
 - i. The number of hours s/he spent dealing with issues relating to The Incident, identity theft, fraud, and/or other misuse of PII;
 - ii. The costs s/he incurred to discover, mitigate, and/or prevent damage due to The Incident and/or losses associated with identity theft, fraud, and/or other actual misuse of PII.
- c. Claimants shall be required to provide supporting documentation if available and provide an explanation and attestation or declaration if no documentation is available.
- d. The information provided by claimants per (a) and (b) above will be used by the Settlement Administrator to determine the amount to be paid.
- e. LeafFilter reserves the right to object to any claim and provide proof to the Settlement Administrator that claimant's representations are not accurate.
- f. Reimbursement will be limited to costs incurred and time spent between April 1, 2018 and June 1, 2019.

You can download the Claim Form at www.ConsumerProductSettlement.com and mail it to:

Tilleman v. LeafFilter Settlement Administrator
P.O. Box 43502
Providence, RI 02940-3502

All Claim Forms must be submitted no later than November 5, 2019.

In addition to the monetary benefits described above, LeafFilter has agreed to undertake and maintain the following cyber security measures:

- i. For a Period of Three (3) Years following Final Approval: LeafFilter will maintain Barracuda Email Security (or its functional equivalent) to manage and filter incoming and outbound email to detect and quarantine email-borne threats.
- ii. Within One (1) Year following Final Approval: LeafFilter will commit to provide: (i) training regarding data security measures to be followed as part of the onboarding process for new employees; (ii) implement ongoing education for existing employees about protection of PII on an annual basis; (iii) provide quarterly email updates on cyber risks and trends; (iv) create and implement written guidelines for the storage, transmission, and destruction of personally identifying information; (v) implement a policy restricting the use of email to send unencrypted PII outside the corporate environment; and (vi) random testing of corporate email accounts to determine whether there have been any violations of the above-referenced policy or automated software to encrypt outbound emails containing personally identifying information. These measures (i)-(vi) will be implemented within one year of Final Approval and will remain in place for at least two (2) years thereafter.

6. What am I giving up to receive these benefits?

By staying in the Class, all of the Court's orders will apply to you, and you give LeafFilter a "release." A release means you cannot sue or be part of any other lawsuit against LeafFilter or its related persons about the claims or issues in this Lawsuit and you will be bound by the Settlement. For your convenience, the Release, which necessarily is drafted in legal-sounding language, is attached as Exhibit 1 to this Notice.

7. How much will the Class Representatives receive?

The Class Representative will receive his portion of the settlement as a Class Member and a payment of up to \$3,000.00 as a service award for having pursued this action. Any service award is subject to Court approval.

8. Do I have a lawyer in this case?

To represent the Class, the Court has appointed William B. Federman of Federman & Sherwood as "Class Counsel."

For litigating the case and negotiating the Settlement, Class Counsel will request from the Court an award of attorneys' fees, costs, and expenses not to exceed \$225,000.00. None of the sums awarded for fees, costs and expenses will reduce the sums available to be paid to Class Members. Any awards of attorneys' fees, costs, or expenses are subject to Court approval. You may hire your own attorney, but only at your own expense.

9. I don't want to be part of this case. How do I ask to be excluded?

If you don't want a payment from this Settlement, but you want to keep the right to individually sue LeafFilter about the issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself, or "opting out," of the Settlement Class. To exclude yourself, you must send a letter by mail that (i) states the Class Member's full name, address and telephone number, (ii) contains the Class Member's signature or the signature of the person authorized by law to sign on behalf of the Class Member, and (iii) states unequivocally that the Class Member's intent is to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement, *Michael W. Tilleman et al. v. LeafFilter North, LLC and LeafFilter North of Texas, LLC*, Case No. 5:18-cv-1153-DAE (W.D. Texas).

You must mail your exclusion request postmarked no later than September 6, 2019 to *Tilleman v. LeafFilter* Settlement Administrator, P.O. Box 43502, Providence, RI 02940-3502.

10. How do I object?

Any Settlement Class Member who has not requested to be excluded from the Settlement Class may object to the Settlement. In order to exercise this right, you must submit your objection to the Court and to the Class Counsel and LeafFilter Counsel. Your objection must (i) set forth your full name, current address, telephone number, and e-mail address (if any); (ii) contain your original signature; (iii) set forth information identifying you as a member of the Settlement Class, including proof that you are a member of the Settlement Class; (iv) set forth a statement of all grounds for your objection, including any legal support you believe applicable; (v) identify all counsel representing you; (vi) state whether you and/or your counsel will appear at the Final Approval Hearing; (vii) contain the signature of your duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; (viii) include a list, including case name, court, and docket number, of all other cases in which you and/or your counsel have filed an objection to any proposed class action settlement in the past three (3) years; and (ix) provide copies of any documents that you wish to submit in support of your position.

Objections must be filed with the Clerk of the Court and mailed or hand-delivered concurrently to Class Counsel and LeafFilter Counsel on or before **September 6, 2019**.

The Court's address is: U.S. District Clerk's Office, 655 E. Cesar Chavez Blvd., Room G65, San Antonio, Texas 78206.

Class Counsel's address is Federman & Sherwood, 10205 N. Pennsylvania Ave., Oklahoma City, Oklahoma 73120.

LeafFilter Counsel's address is Baker & Hostetler LLP, 1801 California Street, Suite 4400, Denver, Colorado 80202.

FINAL APPROVAL AND FAIRNESS HEARING

The Court will hold a Final Approval Hearing on November 25, 2019 at 1:30 p.m. at the John H. Wood Jr. U.S. Courthouse, 655 E. Cesar Chavez Blvd., San Antonio, TX 78205. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable, and adequate and in the best interests of the Class, and to rule on applications for compensation for Class Counsel and an incentive awards for the Class Representatives. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement.

YOU ARE **NOT** REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THIS SETTLEMENT. The hearing may be postponed to a later date without notice.

FOR MORE INFORMATION

Additional information and documents, including case documents, are available at www.ConsumerProductSettlement.com, or you can contact Class Counsel with questions at:

William B. Federman
wbf@federmanlaw.com
10205 N. Pennsylvania Ave.
Oklahoma City, Oklahoma 73120
Telephone: (405) 235-1560

**PLEASE DO NOT CALL THE COURT, THE JUDGE, OR THE DEFENDANTS
WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.**

EXHIBIT 1
THE SETTLEMENT RELEASE

1. On the Effective Date, the Parties and each and every Settlement Class Member shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim may be pursued against LeafFilter or the Related Entities with respect to the Released Claims.
2. Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, pursuing, or participating in any recovery in any action in this or any other forum (other than participation in the Settlement as provided herein) in which any of the Released Claims is asserted.
3. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiff and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as parens patriae or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the "Releasing Persons"), and (ii) Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims. The release set forth in the preceding sentence (the "Release") shall be included as part of any judgment, so that all Released Claims shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.
4. Without in any way limiting the scope of the Release, the Release covers, without limitation, any and all claims for attorneys' fees, costs, and expenses incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Service Award to Plaintiff.
5. With respect to all Released Claims, Plaintiff and each of the other Settlement Class Members agree that, upon the Effective Date, Plaintiff expressly shall have, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, waived and relinquished to the fullest extent permitted by law (a) the provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR" and (b) the provisions, rights, and benefits conferred by any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which the Release is a part.
6. Subject to Court approval, as of the Effective Date, all Settlement Class Members shall be bound by this Settlement Agreement and the Release and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Action or this Settlement.
7. As of the Effective Date, the Released Persons are deemed, by operation of the entry of the Final Order and Judgment, to have fully released and forever discharged Plaintiff, the Settlement Class Members, Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, of and from any claims arising out of the Action or the Settlement. Any other claims or defenses LeafFilter or other Released Persons may have against Plaintiff, the Settlement Class Members, Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, including, without limitation, any claims based upon or arising out of any employment, debtor-creditor, contractual, or other business relationship that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims are not released, are specifically preserved and shall not be affected by the preceding sentence.
8. As of the Effective Date, the Released Persons are deemed, by operation of entry of the Final Order and Judgment, to have fully released and forever discharged each other of and from any claims they may have against each other arising from the claims asserted in the Action, including any claims arising out of the investigation, defense, or Settlement of the Action.
9. Nothing in the Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.