

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MATT BRODY,

Plaintiff,

ZIX CORPORATION, et al.,

Defendants.

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Cause No. 3-04-CV-1931-K

ECF

**LEAD PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,  
CONDITIONAL CERTIFICATION OF CLASS, APPROVAL OF NOTICE PLAN,  
AND SETTING OF SETTLEMENT FAIRNESS HEARING**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Lead Plaintiffs Terry Shinabarker and Carlo D'Amico bring this motion for an order (i) preliminarily approving the settlement with Zix Corporation ("Zix"), John A. Ryan, Daniel S. Nutkis, Ronald A. Woessner, Steve M. York, Dennis F. Heathcote, Russell J. Morgan and Wael Mohamed (collectively, the "Defendants") (together with Lead Plaintiffs, the "Parties") as embodied in the Stipulation and Agreement of Settlement dated March 7, 2008 (the "Stipulation"), included in the accompanying Appendix; (ii) conditionally certifying the proposed Class for settlement purposes; (iii) approving the manner of giving notice of the Settlement to the proposed Class; and (iv) setting a hearing date for the final approval thereof (the "Settlement Fairness Hearing").

This Motion is based upon the Stipulation and all exhibits attached thereto; the proposed Order for Notice and Hearing which provides for the preliminary approval of the Settlement and the distribution of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing, attached to the Stipulation as Exhibit A(1); and all other pleadings and matters of record; and such additional evidence or argument as may be presented at the Settlement Fairness Hearing.

Accordingly, Lead Plaintiffs request that the Court enter the proposed Order for Notice and Hearing, a copy of which is attached hereto.

Dated: March 11, 2008

Respectfully submitted,

s/Roger F. Claxton\_\_\_\_\_

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**CERTIFICATE OF CONFERENCE**

I certify that the defendants agree to the requested relief.

s/Roger F. Claxton  
Roger F. Claxton

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of March, 2008, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means:

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I further certify that a true and correct copy of the foregoing document was sent by first class mail to counsel listed below that have not consented in writing to accept this notice by electronic means:

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