

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: TARGET CORPORATION
CUSTOMER DATA SECURITY
BREACH LITIGATION,

MDL No. 14-2522 (PAM/JJK)

THIS DOCUMENT RELATES TO ALL
ACTIONS

**ORDER REGARDING
DISCOVERY PLAN AND DEPOSITION PROTOCOL**

The Court **HEREBY ORDERS** the following regarding the scope of discovery and the depositions of party and third-party witnesses in this matter. Discovery in the MDL proceeding will be coordinated across all actions. This Order applies collectively to the Consumer Actions and the Financial Institution Actions. The term “Party” herein refers to any one of the following: the Consumer Action Plaintiffs, the Financial Institution Action Plaintiffs, and/or Target. The term “Side” means either (1) the Consumer Action Plaintiffs and the Financial Institution Action Plaintiffs or (2) Target.

Privilege Logs

1. The parties are not required to log privileged or work product documents from or between outside counsel, dated after December 20, 2013. Both sides reserve the right to request a log of particular types of these documents where good cause exists.
2. The producing party will provide a privilege log within 30 days after each production.

Interrogatories

3. Each Side may serve no more than 45 interrogatories, including all discrete sub-parts. Each Party may serve an additional 15 interrogatories, including all discrete subparts (meaning that the Financial Institution Plaintiffs and Consumer Plaintiffs each may serve up to an additional 15 interrogatories, including discrete sub-parts; and Target may serve each group of plaintiffs up to an additional 15 interrogatories, including discrete subparts).

Requests for Admission/Document Authentication

4. In order to reduce the number of requests for admission, the parties must meet and confer regarding authenticity of documents to avoid the use of requests for admission to authenticate documents unless necessary.

Depositions

5. Each Side may take a maximum of 300 hours of deposition testimony, including Rule 30(b)(6) depositions. Expert depositions do not count against the total hours.

6. The duration for each deposition will be governed by Federal Rule of Civil Procedure 30(d)(1).

7. Other than the hourly limitations set forth in the foregoing paragraphs, there are no limits on the number of depositions under Rule 30(b)(6).

8. Time used by an examining Party shall count against that Party, regardless of which Party noticed the deposition.

9. The court reporter service shall maintain a total running time for actual depositions to measure compliance with the time limitations and time allocation provisions herein.

10. This order does not limit any Party's right to object to or seek a protective order with respect to any deposition noticed in the litigation.

Deposition Protocols

11. Depositions shall be noticed pursuant to the Federal Rules of Civil Procedure and all notices shall be served on all Parties electronically. Any subpoenas for deposition testimony (notwithstanding the following paragraph) shall be served on witnesses as required by law, but copies may be served electronically on all Parties. Deposition notices shall have the legal effect of a deposition notice in all related actions.

12. To the extent that any witness is a former Target employee, counsel for Target shall provide the date of departure and last known address of the former employee in response to a written request from the Party intending to notice the deposition. Counsel for Target shall notify any Party noticing the deposition of a former Target employee as soon as possible as to whether counsel will accept service of the notice and will be representing that party for the deposition.

13. Counsel will aim to coordinate on deposition scheduling in advance of sending notices of deposition. Nothing herein precludes a party from serving a notice of deposition following such request if dates are not agreed upon within five business days of notice of intent to depose having been given.

14. Counsel will mark exhibits sequentially within a particular deposition with the prefix being the name of the deponent.

15. Each witness may be questioned by no more than one counsel from each Party, with the exception of depositions taken pursuant to Rule 30(b)(6). With respect to Rule 30(b)(6) depositions, each designee may be questioned by no more than one counsel from each Party per deposition topic.

16. Parties shall be deposed where they reside unless the parties reach a mutual agreement as to an appropriate alternative location. Disputes regarding deposition location that

cannot be resolved through the meet and confer process shall be decided on an expedited basis by the Magistrate Judge through a telephonic hearing with no briefing unless so ordered.

17. Given the travel costs involved, the parties shall be flexible about completing and continuing depositions in order to avoid repeat travel. Witnesses will remain available day-to-day until their depositions have been completed, as long as that deposition does not exceed the time allotted above.

18. To minimize travel and related costs, counsel may participate in any deposition by telephone. Counsel intending to do so must notify counsel for the party that noticed the deposition and counsel for the witness at least 3 days before the date of the deposition. Counsel noticing the deposition shall make arrangements so that a conference call line is available during the deposition. Any party appearing by conference call line shall be responsible for the cost of the additional feature. To the extent any counsel requests real-time video and/or text feed, that counsel is responsible for setting up and paying for the cost of that additional feature. Examining counsel and counsel intending to participate by phone shall cooperate in good faith to facilitate such participation. No deposition shall be delayed or impeded by technical issues related to counsel appearing by telephone or by other non-present means.

19. Regardless of location, all depositions shall be conducted in accordance with all applicable Federal Rules of Civil Procedure and the Federal Rules of Evidence unless otherwise required by law. All objections shall be stated concisely in a non-argumentative and non-suggestive manner. The phrase "objection, form" shall preserve all objections to the form of a question under the Federal Rules and may be used instead of making any particular objection to the form of a question. Any objection to the form of a question shall be deemed to have been made on behalf of all other parties, and need not be repeated by another counsel to preserve that

objection on behalf of such other counsel. Counsel shall avoid making speaking objections or repeating objections already preserved, including but not limited to, and, in particular, when participating by phone.

20. All objections except as to the form of the question or foundation are reserved until trial or other use of the deposition transcript.

21. The following stipulation will apply to all depositions taken in these actions and shall be included in each transcript by the court reporter:

Upon completion of the transcription of today's session, the original transcript shall be sent to counsel for the witness by the court reporter. Counsel shall promptly forward it to the witness for review, correction, and signature under penalty of perjury. Within 30 days of receiving the transcript from the court reporter, the witness's counsel shall then forward the original transcript plus corrections to the court reporter, who will promptly notify all counsel of its receipt and any changes to testimony made by the witness.

Nothing in this paragraph prevents the parties from entering into additional stipulations that they believe are necessary.

22. The following provisions will apply to the handling and signing of transcripts:

- a. The court reporter will send the original transcript by overnight mail to the deponent's counsel. In the case of a third party, the court reporter will include with the transcript a postage-paid envelope with return to counsel for the noticing party.

- b. The witness will have 30 days from receipt to review the transcript, make any changes on an errata sheet provided by the court reporter, sign the transcript under penalty of perjury, and return it to counsel for the noticing party.
 - c. If the witness is not represented by counsel, the original transcript will be sent to the witness by the court reporter. After review, correction, and signature within 30 days from the date of receipt, the witness shall return the original transcript to the court reporter, who will notify all counsel of its receipt and any changes to testimony made by the witness. Any witness who makes changes to his or her deposition transcript must, as required by Federal Rule of Civil Procedure 30(e)(2), sign a statement listing the changes and the reasons for making them.
 - d. Counsel for the noticing party will circulate a copy of the errata sheet and signature page within 7 days of receipt.
 - e. If the original transcript is not signed and returned with errata (if any) by the deadline specified above, the parties agree that a certified copy can be used for all purposes, as if it were an executed and corrected original transcript.
 - f. Counsel for the noticing party will maintain the original transcript and bring it to trial.
23. The following provisions will apply to third-party depositions:
- a. A “third-party” deponent is any deponent who does not have the status of a “party” under Rule 30.
 - b. Counsel will coordinate on: i) scheduling, to avoid imposing undue burden on third parties; and ii) resolution of any objections raised by the third party.

- c. Third-party witnesses subpoenaed to produce documents will be served with the subpoena *duces tecum* at least thirty (30) calendar days before the scheduled deposition. Other third-party depositions shall be noticed at least 14 days before the scheduled deposition.
- d. Each Party will designate a Contact Person to receive documents produced by third parties. Any counsel who receives documents produced by a third party in response to a subpoena *duces tecum* will produce copies of those documents to the designated Contact Persons as soon as possible but no later than within three business days. Counsel will produce documents produced by third parties in the same format in which they were produced by the third party if the documents were produced in electronic format or in electronic format such as pdf if the documents were produced in hard copy. All counsel who receive documents produced by a third party will use best efforts to produce these documents to the Contact Persons by ftp or similar electronic means to avoid the delays involved in sending documents by overnight mail. Counsel transmitting the production to the Contact Persons may include a bill for reasonable reproduction and transmission costs to be paid by the receiving Contact Persons or the Parties they represent.
- e. Absent agreement of the parties or a court order allowing for additional time under Rule 30(d)(1), the subpoena-issuing Side may depose the witness for up to four hours and the non-subpoena-issuing Side may depose the witness for up to three hours. The Sides will meet and confer in good faith regarding this presumptive split of deposition time as needed. To the extent that either Side

does not use its allotted time, the other Side may use the remaining time for further questioning.

24. Any matter not addressed in this Stipulation and Order is governed by the applicable provisions of the Federal Rules of Civil Procedure and Local Rules.

25. Any Party may move the Court to modify this Stipulation and Order upon good cause shown.

IT IS SO ORDERED.

Date: October 27, 2014

s/ Jeffrey J. Keyes
JEFFREY J. KEYES
United States Magistrate Judge