

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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 )  
 IN RE: TARGET CORPORATION ) Case No. 14-MD-2522 (PAM/JJK)  
 CUSTOMER DATA SECURITY BREACH )  
 LITIGATION )  
 )  
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 )  
 ) St. Paul, Minnesota  
 This Document Relates to ) December 11, 2014  
 All Actions ) 11:02 a.m.  
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BEFORE **THE HONORABLE PAUL A. MAGNUSON**  
 UNITED STATES DISTRICT COURT JUDGE AND  
**THE HONORABLE JEFFREY J. KEYES**  
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**STATUS CONFERENCE PROCEEDINGS**

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1                                   P R O C E E D I N G S

2                                   IN OPEN COURT

3                   THE HONORABLE JUDGE PAUL MAGNUSON:   Okay, welcome  
4 back everybody.   I will call a status conference.

5                   Overnight we have received a couple of missiles.  
6 One is that it is my understanding that the banks have  
7 decided not to replead, and that there will be an answer  
8 coming forward with respect to that with an Order.

9                   MR. CAMBRONNE:   Correct, Your Honor, that is  
10 exactly what we agreed to.

11                  THE HONORABLE JUDGE PAUL MAGNUSON:   The second  
12 thing is that the Special Litigation Committee, apparently,  
13 needs a little more time to do their work.   And so that is  
14 set for March 16 for a report.

15                  MS. WILDUNG:   That is correct, Your Honor.

16                  THE HONORABLE JUDGE PAUL MAGNUSON:   That is just  
17 fine.   I suspect that most of those people are old like me  
18 and they will be in the south, too.   So, that is fine, we  
19 will get the -- we will set that up for the 16th of March  
20 and see what happens.

21                  Okay.   With that, Mr. Zimmerman?

22                  MR. ZIMMERMAN:   Thank you, Your Honor.   Good  
23 morning, Your Honors.   I am just going to give you a brief  
24 update on where things are on discovery, just so you can  
25 kind of keep track of the progress we are making.   And I

1 think, once again, we are cooperating well and making lots  
2 of progress. And I will take you through the several items,  
3 and then we will bring someone else up to talk about where  
4 we are with ESI, which I think Judge Keyes has been working  
5 on, but I think we are close. But, we will talk about that  
6 at the end, as well.

7 First off, Target has produced about 140 pages of  
8 documents and they are largely made up of documents that  
9 have been provided to the government investigators and we  
10 are in the process of reviewing it. And we are set up --

11 THE HONORABLE MAGISTRATE JUDGE JEFFREY KEYES: Did  
12 you say 140 pages?

13 MR. ZIMMERMAN: Pages, that would be 37,000  
14 documents.

15 THE HONORABLE MAGISTRATE JUDGE JEFFREY KEYES:  
16 Okay.

17 MR. ZIMMERMAN: I said 140,000. Did I say --

18 THE HONORABLE JUDGE PAUL MAGNUSON: You said 140.

19 THE HONORABLE MAGISTRATE JUDGE JEFFREY KEYES:  
20 You said 140.

21 MR. ZIMMERMAN: What is the difference, Your  
22 Honor?

23 THE HONORABLE JUDGE PAUL MAGNUSON: What all are  
24 we hiding here?

25 MR. ZIMMERMAN: My wife says that when we go

1 shopping.

2 37,000 documents, 140,000 pages -- beg your  
3 pardon. And we are in the process of reviewing it. We have  
4 got a protocol going. I won't bore you with the details,  
5 but it is going well. It always could be faster. We want  
6 more documents. We are going to be getting them, but that  
7 is where we are today.

8 We are reviewing privileged logs and we will have  
9 questions about the privileged logs. Always when you are  
10 getting documents you are getting some -- you are not  
11 getting some that are privileged. We are likely to have  
12 questions about that and that is ongoing.

13 We have been meeting and conferring regarding  
14 additional production and requests, and I think I can say we  
15 are cooperative and we are optimistic that we can narrow the  
16 potential for motion practice there. It is an ongoing  
17 issue, but we are moving forward.

18 And right now we have no reason to believe we have  
19 any motions to make, but we might. It is always, we want  
20 more, they want to give less. We fight about it pretty  
21 well. And at this point we are in that process of asking  
22 for more and waiting for answers to get the "more."

23 To say we reviewed all 140,000 pages so far would  
24 be wrong. We haven't. But, we are ready to accept more  
25 documents once we can get an agreement on what we are going

1 to get.

2 The ESI search terms and protocols we are going to  
3 talk about at the end, so let me just move then to  
4 depositions. Two depositions have in fact taken place of  
5 current and former employees of Target. And more notices  
6 are coming. They will probably be out next week, if not  
7 already. I am not positive. I think they are on their way  
8 out.

9 We have served subpoenas on several third parties,  
10 basically software providers and others with knowledge of  
11 the breach, and what happened post the breach, and why the  
12 breach occurred. And what was the response to the warnings.

13 One of those third parties has filed a motion to  
14 quash, and that is one of the antivirus companies. And that  
15 motion is pending in the Northern District of California and  
16 that is scheduled to be heard on December 19th, their motion  
17 to quash our subpoena of them.

18 We would ask that the Northern District transfer  
19 it to this Court, but that is going to be heard on the 19th.

20 There is another third-party financial company  
21 that is claiming privilege on all of their disclosures, or  
22 all of the materials we have asked. And we have been  
23 working with Target to resolve that issue. And Target has  
24 promised to provide us with a privileged log as opposed to  
25 this overall "we are not going to produce anything because

1       it is all privileged" and we are working that issue through.

2               In addition, we have issued subpoenas to several  
3       of the credit card companies. And these would be like the  
4       Mastercards, the Diners, the American Express and the Visa.  
5       And we are working both directly and indirectly with these  
6       companies and their Counsel to try and get cooperation with  
7       regard to the information we need from these credit card  
8       companies. We are making some progress and --

9               THE HONORABLE JUDGE PAUL MAGNUSON: What do you  
10      mean by indirectly?

11              MR. ZIMMERMAN: Through their general counsel or  
12      their litigation counsel, as opposed to directly, you know,  
13      to them.

14              THE HONORABLE JUDGE PAUL MAGNUSON: I see. Okay.

15              MR. ZIMMERMAN: So, we have some contacts that  
16      have worked with these major players, and so we are trying  
17      to go through, say, Boies Schiller who represents Amex, so  
18      we are working through Boies Schiller to get the access  
19      without having to go through the G.C.. That is all I mean.

20              All in all, Your Honor, I think we are really  
21      working hard on discovery. I think the cooperation and  
22      professionalism has been very good. We don't have anything  
23      pending before Judge Keyes at this time that I am aware of.  
24      I know that Judge Keyes entered an Order on December 2nd  
25      with regard to expert discovery. And that Order is a matter



1 of record, dated December 2nd, which was a stipulated order  
2 regarding the expert protocol. And other than questions  
3 from the Court, I would like the ESI people to kind of give  
4 you a picture, a snapshot of where we are on defining the  
5 ESI terms and where we are with regard to that process,  
6 which is essentially a search, a search vehicle.

7 THE HONORABLE MAGISTRATE JUDGE JEFFREY KEYES:

8 Okay, let me ask you one question before you sit down. I  
9 got yesterday your Stipulated Order for Target to Answer the  
10 Amended Class Action Complaint on January 15th, 2015. That  
11 is all set to go?

12 MR. ZIMMERMAN: Yes. We have agreed to that. And  
13 that was also, the notion at the beginning where we said we  
14 were not going to -- the Financial Institutions are not  
15 moving to amend the Complaint to add any negligent  
16 misrepresentation. And so we have now fixed the answer date  
17 for the Master Amended Consolidated Complaint for January  
18 15th. Thank you.

19 THE HONORABLE JUDGE PAUL MAGNUSON: Okay.

20 MS. TADLER: Good morning, Your Honor.

21 THE HONORABLE JUDGE PAUL MAGNUSON: Good morning.

22 MS. TADLER: Ariana Tadler from Milberg. I have  
23 the privilege of serving as the point person for the  
24 discovery on the consumer side. I also have the privilege  
25 of being the ESI -- one of those folks. Thankfully, I am

1 very happy to be in that position having quite a bit of  
2 experience there.

3 A couple of things. As an overall umbrella for  
4 both cases, the Financial Institution Case and the Consumer  
5 Case, we have been working very extensively with Target's  
6 Counsel and that includes the counsel in both cases for  
7 purposes of establishing an appropriate search protocol.

8 You will recall, I think, two conferences ago,  
9 that counsel for Target had indicated that they were  
10 intending to apply search terms to the massive information  
11 that they were going to be preparing to produce to us. And  
12 we threw up a flag and just said: Time out, please. We  
13 would really like to engage in that process of having  
14 discussions, because we did not want search terms applied  
15 unilaterally.

16 We had extensive discussions, very fruitful  
17 discussions. And I am very pleased to say that this is a  
18 case where those discussions have led to where we are nearly  
19 at the establishment of a final protocol which will involve  
20 -- will even represent the fact that we have participated in  
21 the evolution of those terms, we've helped guide and even  
22 broadened those terms to some extent, narrowed them to some  
23 extent, and also worked out a protocol that contemplates a  
24 QC process both on positive hits and negative hits. So, we  
25 are working towards that. We are close, but there are some

1 questions that we are still resolving, particularly because  
2 at the same time we are also speaking with the Defendants'  
3 Counsel about their responses and objections to the sets of  
4 document requests, and what some of those objections -- how  
5 some of those objections might affect the production. So,  
6 you can't really do the search protocol alone without having  
7 resolved these issues. I would say, perhaps one of the most  
8 important issues there is the time frame for production.

9 And again on that issue, I think we are very, very  
10 close. On some, there will be a broader time range than  
11 others. We also have the expectation that there will be  
12 some preservation, but not production on a broader period  
13 for certain requests.

14 As Mr. Zimmerman pointed out earlier, we are  
15 working so collaboratively now with them, the conversations  
16 are good conversations. We have educated people on the  
17 phone on both sides. And so, we are very pleased about  
18 that.

19 I can also report on the fact that with respect to  
20 the Consumer Plaintiffs, we obviously have our own  
21 respective production responsibilities and we are in the  
22 process of meeting and conferring with Target's Counsel  
23 about those.

24 They had certain items that they very much wanted  
25 to speak to us about and we, of course, had responses and

1 objections to their requests. And those meet and confer  
2 discussions are ongoing. There is one to be scheduled.

3 I understand -- I think we all understand that  
4 Target is eager to have specific deadlines to get things  
5 done by. In my experience, it is important to make sure  
6 that you get through the process and that you do the process  
7 right.

8 The last thing we would want in a case of this  
9 size is to face a do-over. It is just not a place we would  
10 want to go. So, I think we are working in the right  
11 direction, and I think that in short order we will be able  
12 to have an agreement that works for everybody. So, I think  
13 that is pretty much all that I have for the Court. Thank  
14 you.

15 THE HONORABLE JUDGE PAUL MAGNUSON: Okay, thank  
16 you.

17 MR. GUDMUNDSON: Good morning, Your Honors. Brian  
18 Gudmundson on behalf of the Financial Institution  
19 Plaintiffs. And I can report where we are with the  
20 Financial Institution Plaintiffs discovery and the ESI  
21 issues there. I can report that we do have an agreement on  
22 the search terms that the FI Plaintiffs will be using.

23 I connect with all the comments that have gone  
24 before about the collaborative nature of things. It was a  
25 very, very technical process, but one that was incredibly

1 done in good faith and very collaborative, and one that we  
2 did very well with our colleagues at Ropes & Gray.

3 With respect to the rest of the production, we are  
4 doing a joint hand collection, manual collection of paper  
5 and electronic documents in conjunction with ESI searches of  
6 email and some other things.

7 We are continuing to negotiate the objections and  
8 responses that we served on Target back in October. That  
9 process is ongoing, to be handled in relatively short order.  
10 I believe that we are limited to only a very few disputes at  
11 this time.

12 So, at the present moment nothing is hindering our  
13 progress, so we believe we will be moving forward pretty  
14 quickly; but if there is anything that comes up, I am sure  
15 we can handle that expeditiously, as well.

16 THE HONORABLE JUDGE PAUL MAGNUSON: Good, thank  
17 you. Ms. Wildung?

18 MS. WILDUNG: Thank you, Your Honor. I would like  
19 to add a few remarks to what Plaintiffs' Counsel said.  
20 Talking very briefly about Target's affirmative discovery,  
21 Target has sort of written discovery in both the Consumer  
22 and Financial Institution Cases. We have gotten a rolling  
23 production in the Consumer Cases. We are awaiting a  
24 meaningful production in the Financial Institution Cases.  
25 As Counsel has reported, we finally have reached agreement

1 with the Financial Institution Plaintiffs on the search  
2 terms that they are going to use. So, we hope that  
3 production will start flowing in promptly.

4 And we have deposed three of the Consumer  
5 Plaintiffs. We expect more discovery to go into higher gear  
6 probably after the first of the year.

7 With regard to the discovery served upon Target,  
8 Target has produced a large number of documents, has  
9 responded to written responses for production. We are in  
10 the process of working out objections, and we hope we will  
11 reach agreement on that.

12 From Target's point of view, we do continue to be  
13 concerned about the length of time it has taken to get  
14 agreement on the electronic discovery protocol. Target  
15 proposed search terms to Plaintiffs' counsel back in, I  
16 think, early October.

17 We were never going to do anything until we had  
18 agreement, it has just taken us a long time. I am not  
19 suggesting any bad faith on anyone's part, but from Target's  
20 point of view, we know there is a lot of work to be done  
21 once we get the agreement on the protocol. And the longer  
22 it takes us to get agreement on the protocol, the further  
23 back it pushes the time period where Target can start  
24 working on the review of the electronic information.

25 We had had a deadline from the last conference

1 where parties were either going to reach agreement or submit  
2 letters on Monday of this last week -- I think it was  
3 Monday -- I'm sorry, some day this week in advance of this  
4 hearing. One of Plaintiffs' counsel had a family emergency,  
5 couldn't meet that deadline. We were fine with that.

6 But, I think it would be helpful to have another  
7 deadline, just to keep everybody moving forward. So, my  
8 suggestion is there is a date next week by which we will  
9 either reach an agreement on the electronic discovery  
10 protocol and search terms, or we will submit letters to  
11 Magistrate Judge Keyes and can get a decision on that. And  
12 Target thinks that would be helpful. So, unless the Court  
13 has any further questions, I am happy to answer, otherwise I  
14 thank you.

15 THE HONORABLE MAGISTRATE JUDGE JEFFREY KEYES: Can  
16 we get a response on that?

17 MS. TADLER: Your Honor, I don't foresee a problem  
18 solving these issues by December 19th which is a week from  
19 this Friday. I am the Plaintiffs' counsel that had a family  
20 emergency, so I am very grateful to Target's counsel for  
21 accommodating my situation.

22 But, I would ask one clarification that I hope the  
23 Court will appreciate. The fact that it has taken the  
24 amount of time that it has, to date, to work out this kind  
25 of protocol in a case of this size, this is not unusual. It

1 is demonstrative of the fact that the parties are really  
2 working on something to take into account the breadth of  
3 this case, the number of documents that could potentially be  
4 impacted, I think -- I know I can speak on behalf of the  
5 Consumer Plaintiffs and I would like to think that on this  
6 issue I can speak on behalf of the Financial Institution  
7 Plaintiffs, this is not a fishing expedition. We are  
8 working very diligently to get that which we need to prove  
9 our case.

10 We have used, no pun intended, targeted efforts to  
11 do this. And we also have the benefit of the information  
12 that was produced in the context of the initial disclosures  
13 to look at that information with some auditing solutions  
14 that exist today, so that as we worked and continue to work  
15 with Target's counsel on this search protocol, we have the  
16 benefit of knowing information and how the search terms  
17 originally were proposed and even how our broader terms  
18 would have worked out on that initial production.

19 So, for one who lives and breathes in this area of  
20 law, I can tell you we are on track. I don't foresee a  
21 problem about next Friday. In fact, I think everybody would  
22 prefer to have it done by next Friday because of the  
23 holidays coming. But, I want to assure you that in my  
24 experience, this is working the way it is supposed to work.  
25 And we have the benefit again of the prior series of



1 productions that have facilitated how those discussions and  
2 how tools can best be used in the world that exists today  
3 for ESI. Thank you.

4 THE HONORABLE JUDGE PAUL MAGNUSON: Thank you. I  
5 suspect with that, let's just make the due date, Friday the  
6 19th.

7 THE HONORABLE MAGISTRATE JUDGE JEFFREY KEYES: And  
8 then you will come to me if you have any -- if it hasn't  
9 been done, then I want to hear about it.

10 MS. TADLER: Sure.

11 MR. ZIMMERMAN: The 19th, it is.

12 The next item on the agenda, I think it's been  
13 discussed, which is the Financial Institution Cases status  
14 of pleadings, which is the no amendment. We are good on the  
15 Master Amended Consolidated Complaint and the due date of  
16 the answer on the 15th of January.

17 So, unless there is any questions on that, the  
18 third item is the Shareholder Derivative Cases. And I  
19 really am -- other than the Special Litigation Committee  
20 continuing it through March 16th, I have no further contact  
21 with that. I don't know if there is anything we need to  
22 discuss on the agenda.

23 So, that brings us, then, to future status  
24 conferences. There are two dates, January 27th at 11:00  
25 and March 19th at 10:00. I wasn't sure if any of those were

1 in Ft. Myers or not --

2 THE HONORABLE JUDGE PAUL MAGNUSON: No such luck.

3 MR. ZIMMERMAN: No such luck? Okay, then, I can  
4 only beg so much.

5 THE HONORABLE JUDGE PAUL MAGNUSON: But, if you  
6 decide you have to have a special meeting --

7 MR. ZIMMERMAN: Maybe February. I think we have  
8 an open date in February. Hope springs eternal. But, I  
9 think those dates were set by the Court and --

10 THE HONORABLE JUDGE PAUL MAGNUSON: I think this  
11 is all for your benefit, because I think you are an Arizona  
12 guy.

13 MR. ZIMMERMAN: I am. I am, but I like the ocean  
14 too. That is all I have, Your Honor.

15 THE HONORABLE JUDGE PAUL MAGNUSON: Okay, anybody  
16 else have anything? The room is very quiet.

17 Judge Boylan is down in the special proceedings  
18 courtroom on the first floor. And if you would like to go  
19 down there and see what a nice big courtroom looks like or  
20 something, why I think he would appreciate it. Aside from  
21 that, I really don't have anything else. Okay.

22 THE HONORABLE MAGISTRATE JUDGE KEYES: Thank you  
23 all.

24 THE HONORABLE JUDGE PAUL MAGNUSON: Thank you  
25 everybody.

1 ALL COUNSEL: Thank you, Your Honors.

2 (Adjournment.)

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6 \* \* \*

7  
8 I, Jeanne M. Anderson, certify that the foregoing  
9 is a correct transcript from the record of proceedings in  
10 the above-entitled matter.

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13 Certified by: s/ Jeanne M. Anderson  
14 Jeanne M. Anderson, RMR-RPR  
15 Official Court Reporter  
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