

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE: TARGET CORPORATION ) File No. 14-MD-2522  
CUSTOMER DATA SECURITY BREACH ) (PAM/JJK)  
LITIGATION )

----- ) St. Paul, Minnesota  
 ) January 27, 2015  
This Document Relates to ) 11:00 a.m.  
All Actions )  
 )  
 )

BEFORE THE HONORABLE PAUL A. MAGNUSON  
UNITED STATES DISTRICT COURT JUDGE

(STATUS CONFERENCE)

**APPEARANCES**

**FOR THE PLAINTIFFS:**

**Plaintiffs' Lead**                      **Zimmerman Reed, PLLP**  
**Counsel:**                              **CHARLES S. ZIMMERMAN, ESQ.**  
    **BRIAN C. GUDMUNDSON, ESQ.**  
    **1100 IDS Center**  
    **80 South 8th Street**  
    **Minneapolis, MN 55402**

**Chestnut Cambronne, PA**  
    **KARL L. CAMBRONNE, ESQ., ESQ.**  
    **BRYAN L. BLEICHNER, ESQ.**  
    **17 Washington Avenue North**  
    **Suite 300**  
    **Minneapolis, MN 55401-2048**

**Official Court**                      **MARIA V. WEINBECK, RMR-FCRR**  
**Reporter:**                              **1005 U.S. Courthouse**  
    **300 South Fourth Street**  
    **Minneapolis, Minnesota 55415**

**Proceedings recorded by stenography; transcript produced  
by computer.**

**APPEARANCES (Continued)****Plaintiffs Lead Counsel  
(Continued):**

Heins Mills & Olson, PLC  
 VINCENT J. ESADES, ESQ.  
 1100 IDS Center  
 80 South 8th Street  
 Minneapolis, MN 55402

**Plaintiffs' Liaison  
Counsel:**

Reinhardt Wendorf & Blanchfield  
 GARRETT D. BLANCHFIELD, JR. ESQ.  
 332 Minnesota St, Suite E-1250  
 St. Paul, MN 55101

Anderson Helgen Davis & Nissen  
 AMANDA R. CEFALU  
 333 South 7th Street  
 Suite 310  
 Minneapolis, MN 55402

**FOR THE DEFENDANTS:**

Ropes & Gray LLP  
 DOUGLAS H. MEAL, ESQ.  
 MICHELLE L. VISSER, ESQ.  
 Prudential Tower  
 800 Boylston Street  
 Boston, MA 02199-3600

Faegre Baker Daniels LLP  
 WENDY J. WILDUNG, ESQ.  
 90 South 7th Street  
 Suite 2200  
 Minneapolis, MN 55402-3901

\* \* \* \* \*

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

2                                   IN OPEN COURT

3                                   (11:05 a.m.)

4                   THE COURT: Good morning, everybody, and welcome  
5 back.

6                   COUNSEL: Good morning, Your Honor.

7                   THE COURT: We're here on the Target cases, and I  
8 guess this is my concern as much as anything the proposed  
9 agenda that's been passed out and received from you too. I  
10 think we should have a little discussion over the first part  
11 of this, the discovery side particular on where things are  
12 on the bank credit card, and how things are evolving with  
13 respect to the entire bank side of this. Can somebody help  
14 me a little bit where we are?

15                  MR. ZIMMERMAN: On the discovery, Your Honor?

16                  THE COURT: Yeah, and whatever.

17                  MR. ZIMMERMAN: I have a lot to report, and I'm  
18 going to do it in a very summary fashion, if you want me to.

19                  THE COURT: Sure, that's fine.

20                  MR. ZIMMERMAN: I'll do it in a sort of a summary  
21 fashion. If you want me to dig down further, I'm happy to  
22 do so.

23                  With regard to plaintiff's discovery, the first  
24 thing I want the Court to know is that we've issued 12 joint  
25 subpoenas on behalf of the consumers and the financial

1 institutions to a third party security company, third party  
2 vendors of Target, current employees, two current employees,  
3 and two former employees. So they're out there, and we  
4 expect responses, and those subpoenas have been fairly  
5 recently issued.

6 There have been 20 subpoenas on third parties that  
7 are just the financial institution cases. So 12 of them  
8 joint that I just described, and 20 that are financial  
9 institution only. One of those have been withdrawn, but the  
10 general area of those, Your Honor, have been to the payment  
11 credit networks, the Visa, MasterCard, American Express and  
12 Discovery piece, the payment card processors, and the  
13 issuing banks.

14 THE COURT: Okay, so we are starting to get down  
15 into that subject.

16 MR. ZIMMERMAN: Yes, and that's for the purpose of  
17 calculating the loss.

18 THE COURT: Sure.

19 MR. ZIMMERMAN: So that's in the process. We feel  
20 pretty good that that's going forward. It will take more  
21 time than we always expect, but it's out there, and we'll  
22 continue to report of any glitches that may occur. But  
23 that's going to give us a lot of the data that we need to  
24 see, you know, how much were the losses, and how do we  
25 calculate them, and things like that.

1           We have this a little bit of a bust-up. It was  
2           interesting in California with Symantec, and I think the  
3           Court might be aware of that where we issued the subpoenas  
4           to the third party Symantec, and they filed a motion to  
5           quash, and a notice of hearing. And I won't get into the  
6           fun parts of it, but they've produced the documents now, and  
7           we're beginning to review them.

8           So even though we had a bit of a bust-up over who  
9           had title, who has to pay for it, you know, is it outrageous  
10          of what we did, we've gotten the documents, and we're  
11          looking at them. We may have to go back, but we don't know  
12          if we'll have everything we need, but what's been produced  
13          we're looking at and our eyeballs are on it. So that's sort  
14          of the subpoenas, if you will.

15          Depositions, we've taken two depositions so far.  
16          One of a Mr. Kempski, a former Target employee, and a  
17          Ms.Vang, a current Target employee. And we have current  
18          depositions set for February 3, February 11, and February 17  
19          for one of a current employee of Target, one of a third  
20          party vendor of Target that's on the 11th, and one of a  
21          former employee of Target. And those are tentatively set  
22          for the 3rd, the 11th, and the 17th of February.

23          We're working on a date for a 30(b)(6) on the  
24          topic of corporate organizational structure. We don't have  
25          a date to report, but we're working on it, and I'm sure that

1 we'll work that out.

2 And we also are working with American Express and  
3 a number of payment card processors and issuers to work  
4 around the subpoenas I talked about earlier. Maybe it will  
5 just be a voluntary turnover and a document production as  
6 opposed to have to go the subpoena route. We're working on  
7 that with both the processors and several what we call  
8 issuing banks. But if we don't have those worked out, we do  
9 have dates for the subpoenas to be returned.

10 So that's depo --

11 THE COURT: What kind of time do you think is  
12 going to be involved in that? Like you say, it always takes  
13 a little longer than you expect.

14 MR. ZIMMERMAN: A little might not be the right  
15 word, usually a lot longer.

16 THE COURT: Okay.

17 MR. ZIMMERMAN: I think, and Karl is going to talk  
18 about this a little bit. I think we're going to push the  
19 deadline of discovery for the next reason.

20 But in answer directly to your question, the  
21 depositions don't take so long to get noticed and find the  
22 date. It's the documents that need to be reviewed in a  
23 condition precedent to that that tends to take the time.

24 THE COURT: And the documents that need to be  
25 located within the institution, absolutely.

1           MR. ZIMMERMAN: Right. And right now, we've  
2           received 39,000 documents. It's the same 39,000 I reported  
3           to the Court last time we were here. We haven't received  
4           any more. We're looking for that. We understand they're  
5           coming, but they have not arrived. And so to say we're a  
6           bit anxious would be an understatement, which we have a lot  
7           of hungry plaintiff's lawyers looking for answers, but I'm  
8           sure they will be forthcoming.

9           The one glitch, and Judge Keyes knows this,  
10          there's a clawback motion. Some of these 39,000 defendants  
11          are now of the belief that they have a privilege associated  
12          with them, and they shouldn't have been produced, and they  
13          were produced quite a while ago. They were used in  
14          depositions. But that motion is before Your Honor for I  
15          believe the 13th perhaps of February. And that clawback, we  
16          have narrowed the clawback from the original 4,700 to I  
17          think about 3,000 or 3,100 that's going to be the subject of  
18          the claw back. And I don't want to put on the record  
19          anything about that, because it's before Your Honor, and I  
20          think I believe it's being briefed, if not fully briefed  
21          already.

22          But we're looking anxiously toward the next role  
23          of production which we don't have yet of the next documents,  
24          and it has been a little bit of work and maybe a dispute  
25          over what the search terms are and whether or not we've

1 actually narrowed them down to exactly what we want.

2 But I don't know that it's ripe for a lot of  
3 discussion today, but the bottom line is we expect a lot  
4 more documents to be pushed our way, a lot more  
5 infrastructure is in place to review them on our side, and  
6 those documents will be way over 39,000 that we have today.  
7 We just don't have them. And that goes back to the other  
8 question about when will all of these deposition programs  
9 finish, not until we get all the documents reviewed.

10 The good news is in today's world we can work at  
11 them a lot faster because we can them for words and phrases,  
12 and there is all kinds of magic in the computer world. And  
13 we work faster than we did maybe five or ten years ago, but  
14 we have to get our hands on the documents and get them  
15 uploaded into the system.

16 So going back then to the claw back, that's all  
17 set for the 13th. Our brief is due, I believe, the motion  
18 papers are due on February 6th and reply briefs are due on  
19 the 11th, and the hearing will be on the 13th.

20 The documents produced by nonparties, they're  
21 being quoted and organized. There are some documents that  
22 have been produced by nontarget parties, and those processes  
23 are underway.

24 And then there's the documents that we have to  
25 produce of the class reps through the banks, and we have

1 gathered electronically and in hard copy from each of the  
2 five class reps in response to defendant's request for  
3 production. We are continuing to gather them, and we will  
4 be providing them shortly, but we will be providing them in  
5 a timely matter. And we received defendant's first set of  
6 interrogatories to the plaintiffs on January 20th, which was  
7 just last week, and we're currently preparing a response to  
8 that.

9 So in a nutshell, that's where we are. Now, let  
10 me go back to the question, you asked me is this going to  
11 take more time than the July 1 cut-off? Yes. And Karl will  
12 discuss with you just probably how much time that we'll need  
13 because that's going to be also dovetailed into the class  
14 certification question.

15 But that's the report from me, Your Honor, on  
16 discovery, unless you have any questions or does anybody has  
17 any supplements? They'll correct me if I said anything even  
18 remotely incorrect.

19 THE COURT: Anything, Mr. Meal?

20 MR. MEAL: Good morning. Douglas Meal of Target.  
21 Actually, everything was right, I think. No corrections,  
22 but --

23 THE COURT: Red letter day.

24 MR. MEAL: But maybe some additions in terms of  
25 where we're at in terms of what we're doing. Mr. Zimmerman

1 did mention that we had served our first set of  
2 interrogatories. We served our Answer to the Complaint on  
3 the financial institution side per the schedule that had  
4 been agreed upon. We then immediately after that went ahead  
5 and served our interrogatories. Those are really designed  
6 to get us the information we're going to need for the class  
7 certification briefing that's coming up. And we've got  
8 those set in a way that we should get those answers in ample  
9 time to hold to that. I'm not really concerned about that.

10 We made a lot of effort in regard to our document  
11 requests to work with the plaintiffs to resolve their  
12 objections. I think due to a lot of really good discussion  
13 on both sides, I believe maybe one little hanging issue, but  
14 I believe actually at least for present purposes, all of  
15 those objections have been resolved in a way that as  
16 Mr. Zimmerman said, plaintiffs are now in a position to go  
17 ahead and do the search and produce the documents, so we're  
18 thinking we'll get those in ample time as well.

19 And then what we're envisioning, as you might  
20 imagine, is when we get the interrogatory answers and get  
21 the documents produced, we'll then have a program of  
22 depositions that we'll notice again focusing on class cert  
23 predominantly. And we're imagining that that will occur in  
24 the March time frame, which again will give us ample time  
25 for the class certification briefing.

1           So that's our program from the way we're seeing  
2           it, due to a lot of hard work put in on both sides just  
3           tracking right along with what we had envisioned and planned  
4           in terms of what we're trying to do in discovery.

5           In terms of the Target side of discovery in terms  
6           of providing discovery which Mr. Zimmerman alluded to,  
7           really what's out there is the plaintiff's document  
8           requests. Again, what's really been occupying our time  
9           recently is trying to reach an agreement, even if it's only  
10          an interim agreement, on our objections to plaintiff's  
11          document requests.

12          I think we made just tremendous progress there. I  
13          don't think we've got a hundred percent agreement on what  
14          we're going to do on those objections. But I think it's  
15          fair to say that many, many, many of the objections have  
16          been resolved at least on an interim basis such that we're  
17          now in a position that we know at least for now what we're  
18          going to search for. We've got a program in place now to go  
19          ahead and do that search and produce those documents. And  
20          so I can't give you a precise date when that's going to  
21          occur, but we're anticipating that document production will  
22          occur in ample time under the schedule that we have out  
23          there.

24          So there's nothing kind of on the Target side of  
25          this either in terms of documents we're providing or

1 discovery we sought that we're seeing as really creating a  
2 problem for the discovery deadline.

3 In terms of the third party discovery, now that's  
4 not in our control, obviously. And Mr. Zimmerman is right  
5 that there's a number of third party subpoenas that are out  
6 there, and presumably some third party depositions that  
7 they're going to take coming out of those subpoenas. Where  
8 that or how that's all going to shake out in terms of when  
9 those documents get produced and when the depositions will  
10 then occur, not entirely clear.

11 But in terms of fact discovery, the fact discovery  
12 is slated to conclude July 1, so there's still a lot of time  
13 actually between now and July 1 to get that third party  
14 discovery done, I would think. So I'm not saying that no  
15 way, no how would there ever need to be an extension, but  
16 I'm not seeing based on my view of where we're at that there  
17 would need to be what I would call a substantial extension  
18 of the fact discovery deadline.

19 But I'm happy, obviously, I want to make it clear  
20 to the Court, happy to sit with the plaintiff's counsel and  
21 talk it through and get a better understanding. Because we  
22 don't have visibility really into the third party discovery  
23 issues that were alluded to in terms of what's going on in  
24 their discussions with those third parties, but happy to sit  
25 with them and talk with them about when they're really

1        expecting that stuff to role in and what its implications  
2        will be for the July 1 discovery deadline.

3                But at least from the Target perspective, we're on  
4        track. So that's my report, Your Honor.

5                THE COURT: Okay. Very well. Thank you,  
6        Mr. Meal. I think you're getting ready to stand up and tell  
7        me something.

8                MR. ZIMMERMAN: The only thing I can say is they  
9        can't tell us when they're going to start giving us these  
10       documents. It's hard to hold us to a date when we have to  
11       be finished with the documents. Doug said quite honestly he  
12       doesn't quite know when we're going to get these documents  
13       because we haven't quite got all the search terms wrestled  
14       down with him. I respect that. I think it's his  
15       professional judgment and need that goes into that.

16               But on the other side, if we don't know when we're  
17       starting, we can't be held to a date specific in July when  
18       it's going to be all ended. Nobody wants to get backed into  
19       that corner, and I think that's all I need to say about  
20       that.

21               THE COURT: Okay, very well. I think we will get  
22       out of that date a little but, but Mr. Cambronne, do you  
23       want to --

24               MR. CAMBRONNE: Yes, Your Honor. I need to and  
25       the Court needed I think for you to have that background of

1     what's happening out there outside of this courtroom, and  
2     both sides are professionally moving it along. But as is  
3     oftentimes the case, you don't -- you're optimism gets  
4     dashed for a variety of reasons.

5             Now, as the Court knows, there's been an evolution  
6     in recent years about how courts like you are to consider  
7     class certification motions. There's talk a lot of a  
8     vigorous analysis, robust analysis of underlying allegations  
9     in the Complaint and that type of thing in order for you to  
10    be fully informed at the time you render an opinion. And,  
11    of course, we're cognizant of that as is Target.

12            THE COURT: I haven't quite figured out what they  
13    mean by a "robust analysis." They're supposed to stand up  
14    and shout or?

15            MR. CAMBRONNE: I guess so, but those is the rules  
16    as we say now, and it's evolving. To put this into  
17    perspective, you have scheduled a trial ready date of March  
18    first next year. What I think can happen, what I'm going to  
19    propose anyway, and I don't know how you want to ultimately  
20    resolve this, but what I'm going to propose is not going to  
21    impact that end date, if you will, which I think is always a  
22    concern of the Court.

23            Right now, briefing for class certification is to  
24    commence on April first. It's to end on May first. In  
25    other words, there's the responsive briefs and everything in

1       that one month period. It would be prudent, I think, in  
2       order to make sure that you can have the fulsome record,  
3       which I think is appropriate in a case of this sort to  
4       determine class if the class certification briefing went  
5       back to the month of September.

6               In other words, September kick off our brief  
7       moving for class certification, and it would all be resolved  
8       within the month of September, and so we have early October  
9       class certification motion, if you will. And a decision  
10      sometime thereafter.

11             Now, because of the problems alluded to by both  
12      Mr. Meal and Bucky Zimmerman here about discovery, a July  
13      first cut off strikes me as just being impractical anymore.  
14      If we were to approach discovery with a cut-off say of  
15      December 15 th, that would leave intact your end date for a  
16      trial ready status in this particular case of March first,  
17      and would allow a professional and but vigorous discussion  
18      and allow us to complete these discovery issues.

19             As you alluded to, you know, as Bucky I guess  
20      alluded to, taking a deposition is not a lengthy process,  
21      but preparing for it with the necessary background and  
22      making it useful to parties in the Court is something else  
23      again.

24             So if we can move the discovery back to  
25      mid-December or sometime in December, and the class

1 certification briefing back to September, get it all  
2 completed in September, I think that would not jeopardize  
3 what the Court established as a ultimate deadline in this  
4 case and would accomplish, I think, the salutary goals that  
5 we've outlined in making sure that the Court has the best  
6 possible record before it when it makes its determination  
7 about class certification, so that's my proposal.

8 Now, we, as you can imagine, we talked to the  
9 colleagues from Target about this, and we haven't come to an  
10 agreement, if you will. I assume Mr. Meal or somebody can  
11 stand up and give us a view of life that Target has, but I'm  
12 comfortable from the plaintiff's side having just  
13 articulated what we're trying to do and how we're expected  
14 to do it then have the Court just make a decision about the  
15 scheduling issues without further ado. Or if you want it  
16 briefed up by the parties and presented by way of formal  
17 motion, obviously, I'd be willing to do that too.

18 But what we did not want to do is come to you at  
19 mid-March at the next status conference when a deadline is  
20 looming within a week or so or two weeks and present this  
21 issue. We wanted to be proactive in making sure this is  
22 done in a deliberate sort of fashion.

23 So that's kind of our view of how things could  
24 unfold, and we're happy to hear what Target has to say, but  
25 we're ready to just have you decide that up or down.

1 THE COURT: Okay, thank you. Mr. Meal?

2 MR. MEAL: Thank you, Your Honor. Well, so this  
3 was discussed sort of conceptually. This is the first I  
4 heard of this now proposed schedule. So let me make some  
5 comments on it. But I do think we're talking about  
6 something here that would be fairly significant in terms of  
7 what we're talking about in terms of changing these dates.

8 So I mean on fact discovery, it seems to me, first  
9 of all, really premature at this juncture to think we need a  
10 five and a half month fact discovery extension. I mean that  
11 would almost double the period that we had allotted  
12 originally for fact discovery in this case. And I'm not  
13 seeing or hearing anything that suggests that somehow we're  
14 not going to be able to complete fact discovery much closer  
15 to July 1 than December 15. You know, from a Target  
16 perspective, we're not seeing any reason why we can't  
17 complete it by July 1.

18 Again, I'm happy, I want to be clear with the  
19 Court, absolutely happy. I'm not digging in my heels.  
20 We're happy to sit down with the plaintiffs and understand  
21 what these constraints are that would necessitate such a  
22 large extension to the fact discovery schedule. We haven't  
23 heard that yet.

24 But we've discussed this, I mean my discussion on  
25 this topic with plaintiff's counsel was about five minutes

1 on the phone yesterday, so we haven't really dug in and  
2 discussed it. So I'm happy to do that, and one thing I  
3 would respectfully suggest is maybe that's the first step is  
4 for us to really sit with them and see if we can understand  
5 what their concerns are and agree on something and then come  
6 back to you, obviously, with whatever comes out of that. If  
7 there's an agreement, great. If there's not, we'll come  
8 back to you, and so I suggest that perhaps is the first  
9 step.

10 A couple points though. First of all, in terms of  
11 the fact discovery schedule, if we move fact discovery to  
12 December 15, the current schedule then layers in after that  
13 a lot of work and a lot of stuff. There's expert  
14 disclosures and discovery. There's briefing on dispositive  
15 motions. There's briefing on non dispositive motions. All  
16 of that is built into the current schedule to occur  
17 currently in the fourth quarter of 2015. And this would, I  
18 mean, I hear Mr. Cambronne in terms of the trial date, but  
19 you'd be shrinking or eliminating really that whole phase of  
20 the schedule.

21 Even under the current schedule, we're talking  
22 about a very, very tight time frame to do expert discovery,  
23 expert disclosures, Daubert motions, dispositive motions.  
24 So I really wouldn't see how it could be the case that there  
25 would be a move in the fact discovery schedule that would

1 leave the trial date intact.

2 But we don't want to move the trial date, so  
3 that's why we're hesitant to just say, oh, great, let's just  
4 move the fact discovery schedule. Let's see them working  
5 that that won't ripple through to the trial date.

6 On class cert, I think Mr. Cambronne slightly  
7 misspoke earlier. The briefing schedule on class cert,  
8 opening briefs are due April 1, opposition briefs are due  
9 May 1, and reply briefs are due June 1. So there's a two  
10 month briefing schedule actually. And then, presumably,  
11 there will be an argument or I mean I don't know Your  
12 Honor's practice particularly but, frequently, there would  
13 be even a testimony hearing on class certs, if there's  
14 experts, for example. That could be the case here. You  
15 might choose to do that.

16 THE COURT: Let's hope not.

17 MR. MEAL: Yeah, I'm not arguing for one. I'm  
18 just saying that that could be on the horizon. So the idea  
19 that somehow the class cert gets briefed and resolved in a  
20 month, I don't see that at all. I don't think that was ever  
21 the vision. Certainly, I think there was a two month  
22 briefing schedule and then a hearing following that. So I  
23 would think it's going to be at least a three or four month  
24 process to resolve class certification from the briefing.

25 Absolutely agree with, and I've read the same

1 cases that talk about the nexus between class certification  
2 and merits. I agree with that, but it's not a complete  
3 overlap. Here, there's lots and lots of merits discovery  
4 that really won't come into play at all on class  
5 certification. The class certification merits issues are  
6 going to be things like issues that would defeat  
7 predominance under (b)(3). So things like causation of an  
8 individual issuers damages, the amount of an individual  
9 issuers damages, contributory negligence on the part of  
10 individual issuers. Those are merits issues, absolutely  
11 appropriate for discovery as merits, and appropriate for  
12 class cert discovery. Absolutely you'll be hearing about  
13 those issues before in the class cert briefing.

14 But that discovery is, you know, like this  
15 compared to all the discovery which is like that. So there  
16 really shouldn't be, from where we're sitting, there  
17 shouldn't be any need to move the briefing on the class cert  
18 by that amount of time. We're talking September 1, that  
19 would be a five month extension. I mean that, the original  
20 schedule contemplated seven months between really the start  
21 of discovery. That's after automatic disclosures and  
22 briefing. It was a seven month period under that original  
23 schedule.

24 So just saying we're going to now move that and  
25 add an additional five months to that, that's almost

1 suggesting that nothing has been accomplished in the last  
2 seven months to get this case ready for class cert briefing.  
3 And I don't think anyone is saying that.

4 Now, again, absolutely glad to sit with the  
5 plaintiffs's counsel and talk about something that makes  
6 sense here. Again, this is a little bit kind of being  
7 sprung on us today and would again suggest to the Court that  
8 maybe that's the first step, and we'll discuss it promptly  
9 and come back with something that we either agree on or  
10 don't agree on.

11 But just in terms of what I've heard today, I'm  
12 not seeing anything that's telling me that the merits  
13 discovery that goes to class cert can't be completed by  
14 April 1. I mean that's, you know, two months away right  
15 now. There's just targeted discovery. Most of the class  
16 cert is discovery that we want, relative things like  
17 causation and damages and contributory negligence and things  
18 like that.

19 So anyway, again, I'm not saying that we couldn't  
20 ultimately support what I would call a modest extension of  
21 some of those deadlines. If it were a modest extension,  
22 perhaps we could hold the trial date to squeeze things in a  
23 bit. But, you know, sitting here today, standing here  
24 today, extensions of that magnitude just don't to us seem  
25 warranted given the record that exists in the case.

1 THE COURT: Okay.

2 MR. MEAL: Thank you.

3 THE COURT: Thank you. Mr. Zimmerman?

4 MR. ZIMMERMAN: This question of merits and class,  
5 we're parsing words a lot. I just want the Court to know  
6 this. We believe that what Target knew when they knew it,  
7 how the people got into the breach, and where this  
8 confidential data was stored, and how it got released is  
9 relevant for class certification, and we are having to look  
10 at that. That is the meat of what is going on here and what  
11 the documents and the discovery is tailored to. I just  
12 don't want there to be any movement in terms of our position  
13 with regard to the Court.

14 Number two, in that quest for information be it  
15 for merits in the trial or class before trial, we can't do  
16 that work until we get the documents, and we don't have the  
17 documents yet, and we don't know a final day when we will  
18 have the documents. And when we get those documents, maybe  
19 we should reset the clock then or take Karl's suggestion  
20 that we reset the clock now.

21 But until we get the documents, we just can't do  
22 anything more than say to the Court we're going to need more  
23 time because we don't have what we would hope we would have  
24 at the end of January 2015, with regard to the preparation  
25 of the case going forward.

1 THE COURT: Okay. Thanks.

2 MR. CAMBRONNE: And I want to acknowledge what  
3 Mr. Meal said that the class certification schedule does  
4 contemplate a two month as opposed to a one month schedule.  
5 The final, he's correct. I made a mistake, the final reply  
6 memorandum would be two months after the initial brief was  
7 filed.

8 By the way, we're all looking at document number  
9 93 as being the operative schedule right now anyway. This  
10 is what we're looking at the dates in that document.

11 THE COURT: Okay, thanks. Excuse me, I went out  
12 to California a couple weeks ago and came back with a  
13 California alien, and so far it hasn't been cold enough in  
14 Minnesota to freeze it out.

15 I want to talk a little bit and give you a ruling.  
16 And what I want to talk about is a couple of things because  
17 I think it's time that we all share a little philosophy  
18 that's involved in this.

19 One of the overall difficulties that exists in  
20 national litigation and MDL litigation is a great tendency,  
21 and this is for those of us that are on this side of the  
22 room, have a great tendency not to close these cases. And  
23 they tend to drag, and they tend to go on, and they tend to  
24 go on. And, frankly, as a judge every once in a while I get  
25 one of these things sent back and what in blazes is that?

1       Something that happened back in my youth.

2               And so when we met to set these schedules, I'll be  
3       the first to tell you that I was feeling very aggressive  
4       about this. I want these cases closed for the benefit of  
5       everybody, and this is particularly true on the bank side.  
6       That, you know, the banks are in business, Target is in  
7       business, they want to stay in business, and they want to  
8       keep going on in business, and they don't want this looming  
9       out there. And so I'm conscious of that. And that was  
10      involved, this whole philosophical thing was involved in  
11      this whole setting the schedule.

12             Now, there's a second thing that's philosophical  
13      but it's a little more practical. When you're sitting in a  
14      room downstairs, and you've got 75 or 100 lawyers looking at  
15      you with their meters ticking, you haven't got the slightest  
16      idea if these people are ever going to speak to each other.  
17      And you don't know at that point in time of what everything  
18      that comes up along the line, every comma, and every period,  
19      and every word, and every paragraph, and every letter is met  
20      with another motion in front of the Court. And that happens  
21      in cases, we all know that. We've all been involved in  
22      those.

23             If you've got that kind of situation, that  
24      dictates being very aggressive in terms of your deadlines  
25      because you got to force those things out and force the

1 decisions and the processes. Now, I turn to what I'm really  
2 thinking.

3 I can't tell you folks how much I commend you for  
4 what you're accomplishing with never coming to see us. And  
5 I say that to both sides, and I hope you reflect that back  
6 to your clients because it's important. You've done an  
7 incredible amount of work. It's not easy. We know it's not  
8 easy.

9 We know, like you said, it doesn't take long any  
10 more to examine 40,000 documents. Well, that's true. You  
11 don't sit any more and go page by page. But it takes a long  
12 time to set up the program that examines the 40,000  
13 documents, and I know it. I probably don't know it as well  
14 as you do, but I know it. And I have to say that I just see  
15 tremendous strides that have been taken in this period of  
16 time of working this out.

17 At the same token, Mr. Zimmerman is right. It's  
18 hard for him to put a deadline, it's hard for either side to  
19 put a deadline on it until you know where you start. And  
20 you can't start until you get up to the starting line I  
21 guess is what it comes down to. And I see great efforts  
22 being placed here, and I fully frankly think rewarding those  
23 efforts is a positive thing to do. Now, the other side of  
24 it.

25 Mr. Meal is absolutely right on. There is no way

1 I would want to sit in those chairs and put into a period of  
2 time from December 1 of next year until March 1 of next year  
3 what would be on the plate. That would be monumental from  
4 your side. That would be overwhelming from our side because  
5 all that stuff that you produce, we got to read. And that  
6 takes time, and it takes time to turn around and give our  
7 statements on it.

8 So we're into a balancing factor in this whole  
9 thing. And I'm going to make a suggestion here, and it's  
10 going to be about a three-fold suggestion. I think I am  
11 going to, because of the cooperation I've seen occurring  
12 here, go ahead and extend these deadlines knowing that I  
13 don't think you're going to take advantage of it.

14 My thought is to extend on the class motion until  
15 July 1, a response on August 1, the reply on September 1,  
16 with a hearing date in early December that we can set up  
17 even now, I guess. Take care of that class side. Then I  
18 think fact discovery can cut off in October 1, and that  
19 gives quite a bit of an extension here. And it still makes  
20 that closing five, six months a pretty busy time, but I  
21 think it could be made. At least we've tried with it.

22 Now, there's two other comments I'm going to make  
23 along this same line. I think my comments, you have to  
24 understand that my comments that I've just made are made, A,  
25 without consultation with my right arm, and that's not a

1 right thing to do. But, you know, why the heck go back and  
2 have conferences about this stuff. Just do it.

3 The second part is it's a pretty well-known fact,  
4 we're not hiding anything that a major portion of Judge  
5 Keyes' life is going to be in Naples over the next two and a  
6 half months, and a major of portion of my life will be in  
7 Fort Meyers for the next two and a half months. They've got  
8 a courthouse in Fort Myers. If it is necessary to come down  
9 and have some kind of interim discussion, we can do that.

10 In the meantime, too, I think all of you have got  
11 my cell phone number, and I think you've got Judge Keyes  
12 cell phone number, and we're not afraid to use them. As a  
13 matter of fact, except for the last week of February, the  
14 first week of March, I'll be in trial down there. You know,  
15 I'll be far more available then I normally am for  
16 discussions.

17 And I'm saying all of that because if what I've  
18 arbitrarily said today turns out to be a big whoops, you  
19 know, a call of discussion, I don't discount at all having  
20 it. And I think so anyway, at that point, I'm just going to  
21 leave it at that point, but let's try for that kind of a  
22 schedule and see if it doesn't work, and that will leave the  
23 trial date where we are.

24 Okay. Somebody wants to amend the pretrial  
25 scheduling order for the -- I'm sorry, I am reading the

1 wrong thing. We talked about that. Someone wants to amend  
2 the special litigation committee to add a protective order.  
3 Ms. Wildung?

4 MS. WILDUNG: Thank you, Your Honor. Your Honor  
5 will recall that Target appointed a special litigation  
6 committee to investigate the claims made in the shareholder  
7 cases. The committee has been at work. I received a phone  
8 call from Steve Gaskins, counsel to the special litigation  
9 committee. They're aware of, the committee is aware of  
10 third party subpoenas being served in this case and  
11 documents being received from third parties. The committee  
12 doesn't have subpoena power. Mr. Gaskins requested access  
13 to those third party documents and other documents that have  
14 been exchanged in discovery in the case. And Target,  
15 obviously, has no objection to any of that. However, many  
16 of the documents that have been received are stamped  
17 confidential or highly confidential under the protective  
18 order. And the committee is not a party to the protective  
19 order.

20 However, the protective order provides that it can  
21 be modified by consent of the parties and order of the  
22 Court. I reached out to lead counsel for the shareholders,  
23 the consumers, and the financial institutions, and asked  
24 them if they would agree to a modification of the protective  
25 order that would allow the committee members and their

1 counsel to have access to confidential and highly  
2 confidential information provided they sign and deliver  
3 written assurances that they would comply with the order and  
4 be subject to the jurisdiction of the Court. And counsel  
5 all agreed to that.

6 So upon receipt of written assurances from  
7 committee members and from committee's counsel, I will  
8 circulate a stipulation, and we'll submit it to the Court.  
9 And it would essentially provide that the committee and its  
10 counsel would have access to confidential and highly  
11 confidential information.

12 So I don't know if the Court has any questions or  
13 concerns about that, but that's how we propose to proceed to  
14 accommodate that request.

15 THE COURT: I just add one more line to my  
16 commendatory comments of earlier.

17 MS. WILDUNG: Thank you, Your Honor.

18 THE COURT: That's something I like to see and,  
19 frankly, of course, it obviously makes total sense that  
20 there needs to be included in that.

21 MS. WILDUNG: Thank you, Your Honor.

22 THE COURT: So please proceed with it.

23 Okay. Aside from that, we've also got a couple of  
24 dates here of Thursday, March 19, for the next status  
25 conference. And to follow that, Wednesday April 29, for a

1 status conference with that. Any difficulties with it? And  
2 when we get together on the 19th, remind me that that's my  
3 wife's birthday, so I don't forget.

4 If that's all fine, I will stay with those dates.  
5 And with that, anything further that we should bring to our  
6 attention today? Mr. Cambronne?

7 MR. CAMBRONNE: Do you want the parties to submit  
8 a proposed with the dates you've now announced an amended  
9 scheduling order? Or do you want to do it yourself?

10 THE COURT: Sure. I'm inherently lazy.

11 MR. CAMBRONNE: Okay. We'll do that then.

12 MR. MEAL: If I might, I think Your Honor had  
13 mentioned perhaps trying to pick a date today for the  
14 hearing on class cert.

15 THE COURT: Yeah, I was kind of passing that off  
16 to Jackie. Can we kind of arbitrarily grab something very  
17 early in September, the first or second week of September?  
18 I go to the USRF -- wait, that's in October the USRF  
19 meeting, so whatever you want in September.

20 THE CLERK: The 10th.

21 THE COURT: September 10.

22 THE CLERK: Will that work?

23 THE COURT: See how Judge Keyes likes that. Okay.  
24 September 10, 10:00 in the morning.

25 Okay. Anything else for the good of the order?

1 If not, all of you, thank you very much for coming in today,  
2 and we'll look forward to seeing you in a little more than a  
3 month.

4 COUNSEL: Thank you, Your Honor.

5 (Court adjourned at 11:50 a.m.)  
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11  
12 I, Maria V. Weinbeck, certify that the foregoing is  
13 a correct transcript from the record of proceedings in the  
14 above-entitled matter.  
15

16 Certified by: s/ Maria V. Weinbeck

17 Maria V. Weinbeck, RMR-CRR  
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