

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 ) March 19, 2015  
 All Actions ) 10:04 a.m.  
 )  
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BEFORE **THE HONORABLE PAUL A. MAGNUSON**  
 UNITED STATES DISTRICT COURT JUDGE

**MOTION REQUESTING PRELIMINARY APPROVAL PROCEEDINGS**

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

**IN OPEN COURT**

THE COURT: Good morning, everyone.

ALL COUNSEL: Good morning, Your Honor.

THE COURT: We have the matter of the Target MDL, and a little bit more than just a regular status conference. And so with that, I suspect, Mr. Esades, you might have something to tell me.

MR. ESADES: Good morning, Your Honor. Before you today we have Consumer Plaintiffs' Motion for Preliminary Approval of a Settlement of all the Consumer Actions in this MDL. The case would settle the Class that is defined in the Complaint, and as also set forth in the settlement materials which is all persons in the United States who use credit or debit card -- whose credit or debit card information, whose personal information was compromised as a result of the data breach that was first disclosed by Target on December 19th, 2013.

The papers that have been submitted outline the various benefits of the settlement, but I thought it might be a good place to start to just generally review them. It falls into, generally, five categories of benefits to the Class.

The first is that Target has agreed to provide a settlement fund of \$10 million. This settlement fund will

1 be distributed to settlement class members pursuant to the  
2 distribution plan, which also accompanies the settlement  
3 agreement.

4 Also out of this fund will be payment of any  
5 service awards to settlement class representatives that may  
6 be approved by the Court. And they're set forth in  
7 Exhibit 8 to the Settlement Agreement. And I am happy to  
8 report that 112 of the 113 named class representatives have  
9 given their approval of this settlement. The one that has  
10 not, simply has not been able to be located at all of the  
11 contact addresses that we have, and we are still trying to  
12 locate her. And we expect that when we do locate her, she  
13 will also approve, as did all of the others. So, we've got  
14 no dissent as of today.

15 No part of this settlement fund will revert to  
16 Target. In other words, every effort will be made to  
17 distribute every single dollar to qualifying settlement  
18 class members of this \$10 million fund.

19 The second of benefits is that Target has agreed  
20 to nonmonetary relief designed to better safeguard consumer  
21 data. Now, for at least five years following the effective  
22 date, Target will first appoint a chief information security  
23 officer, a high-level executive to take responsibility for  
24 its information security.

25 Second, they will maintain a written information

1 security program where they will be able to identify  
2 internal and external risks to security consumers' personal  
3 identifiable information that could result in another  
4 breach.

5 Third, they will maintain a process to monitor the  
6 information security events and respond to such events  
7 determined to present a current threat. In other words,  
8 they are going to design and implement some reasonable  
9 safeguards to control these information security risks.

10 And finally, they are going to provide security  
11 training to Target employees and train the relevant  
12 employees to reduce the effects of any breach that might  
13 occur to simply stop the breaches in the future. These  
14 benefits are going to be available to every single  
15 settlement class member, even those that don't qualify for a  
16 cash payment.

17 Third, Target has agreed to separately pay all  
18 costs associated with providing notice to the settlement  
19 Class. Notice is going to be provided through a third-party  
20 Kinsella Media. We have attached Kinsella Media's Affidavit  
21 from Shannon Wheatman and also their qualifications. They  
22 have served in many, many settlements as a notice  
23 administrator and they are quite good. The cost of the  
24 notice is going to be around 6 1/2 to 7 million, alone, we  
25 are estimating. It could perhaps be more but it depends on

1 the number of additional mailings and followups that need to  
2 be done.

3 Number four, Target will separately pay all of the  
4 costs of administering the settlement under the distribution  
5 plan, including the settlement administrator's fees. The  
6 settlement administrator is Rust Consulting. Rust is also  
7 nationally recognized and highly qualified and was selected  
8 after an arduous bidding process among seven notice  
9 administrators. And we spent a great deal of time vetting  
10 their proposals and vetting their ability to do this, and  
11 also vetting the security that they have with respect to the  
12 settlement website that will be set up.

13 And finally, Target will separately pay attorney's  
14 fees and expenses awarded by the Court to Settlement Class  
15 Counsel. Under the agreement, that petition to the Court  
16 will be made 21 days before the objection and opt-out  
17 deadline. So, no request is being made as of yet. But any  
18 request may not exceed 6.75 million for attorneys fees and  
19 expenses. Target has reserved its right to object to any  
20 fee petition that the Plaintiffs put in. And we have agreed  
21 that no matter what the disposition is of the fee and  
22 expense petition, that it will not affect the finality of  
23 the settlement.

24 In other words, those two have been de-linked. If  
25 there are objections or appeals on the attorneys fees and

1 expenses that Target is going to pay, a settlement could be  
2 finally approved and go forward without objection.

3 We believe this settlement provides for  
4 significant monetary and nonmonetary relief and meets the  
5 standards for preliminary approval; and that these benefits  
6 compare very favorably to past settlement breach cases that  
7 we have studied and looked at and discussed with Target and  
8 with the mediator.

9 One other -- I guess these are logistics. The  
10 timing and important dates going forward. Under the  
11 Preliminary Approval Order and based on the notice program  
12 that we are going to have to put into place, what we would  
13 suggest, and if the Court will preliminarily approve the  
14 settlement, we will begin to have direct notice beginning  
15 about April 30th. So, by April 30th, 2015, the direct  
16 notice campaign would begin.

17 The direct notice completion date would be  
18 May 31st. And the reason it is somewhat staggered is when  
19 you're doing email as part of a mailing, you need to stagger  
20 your email drops -- you can't do them all at once -- and  
21 then you can certainly identify problems. And they do them  
22 in tranches to make sure that you get maximum deliverability  
23 of that individual notice. The on-line media will begin on  
24 June 1, 2015, and the earned media and outreach would also  
25 begin on June 1. Print media would begin on June 16th. And

1 based on the research of Kinsella Media -- and as you can  
2 see in the Affidavit from Shannon Wheatman, the print media  
3 would consist of "Better Homes and Gardens" and "People"  
4 Magazine. And those aren't randomly selected. They do  
5 studies to determine the maximum reach they can get based on  
6 the types of consumers they're trying to reach.

7 Keeping in mind that we believe we are going to  
8 reach an extremely high percentage of the Class members  
9 through direct mail and postcard notice, not to mention what  
10 is going to be, we believe, expensive press coverage, which  
11 started a mere 12 minutes after the first ECF hit the wire  
12 last night, I can attest to, as my cell phone rang. We  
13 would then set an objection and opt-out deadline for  
14 July 31st, 2015, for any Class members.

15 THE COURT: I'm sorry, counsel. I missed the  
16 date. Did you say 21st or 31st?

17 MR. ESADES: July 31st -- I'm sorry -- if I said  
18 21st --

19 THE COURT: No, I think you did say 31st. I just  
20 didn't catch it. Go ahead.

21 MR. ESADES: And having done these -- just  
22 candidly, having done these cases before, there will be  
23 objectors because there are attorneys out there that this is  
24 their profession, to object as professionals to these types  
25 of proceedings. There may also be other objections, but we

1 expect that that will happen on that date.

2 The motion for final approval, we will submit by  
3 September 15th, 2015, which means that the final approval  
4 hearing, based on the Court's availability, could take place  
5 on October 15th or anytime as close to there as the Court is  
6 able to do it.

7 THE COURT: Counsel, I have got to make a  
8 disclosure to you with that statement.

9 MR. ESADES: Yeah.

10 THE COURT: If I don't make it now, I might forget  
11 to say it. I have committed to a trip to Israel this fall.  
12 I think I will know the dates of that this afternoon or this  
13 noon. But as I am here right now, I don't. It is one of  
14 those deals where you make a commitment and it is a group  
15 thing and, well, we think we might go now, we might go then.  
16 And I have got to get as close as I can to that because I  
17 think I can say that if we do this on Tuesday, November 10,  
18 I am virtually positive I am going to be clear of it; but, I  
19 might be able to do it earlier depending on that Israel  
20 thing, but I just don't know for sure. But I will know it  
21 very soon and we will get a date in there and let you know.

22 MR. ESADES: Great. And one of the things that we  
23 do disclose, not only on the website but in the notice that  
24 goes out, is that the date of that actual hearing may be  
25 moved or adjusted by the Court based on availability,

1 because that is something that does happen. So --

2 THE COURT: Well, you know, but then that is kind  
3 of the good Lord willing, and the creeks don't rise, because  
4 you don't want to play with that date unless it is an  
5 absolute necessity.

6 MR. ESADES: That is true. But, we do like to  
7 make sure that people who intend to show up understand that  
8 they should check and keep checking to make sure that date  
9 states what it is.

10 The website, as I referred to, will be up and  
11 running shortly after -- if the Court grants preliminary  
12 approval, we will get that up and running hopefully within a  
13 few days. The Order says within 15 days, but we really hope  
14 that to be up within a few days, because calls are already  
15 starting to start with consumers wanting more information  
16 about it. The sort of manner in which these unfold, I  
17 think, is important just to walk through. The website will  
18 be a static website. There will not be the availability at  
19 that point to put up a claim form and have people start  
20 processing claims.

21 And there is a very good reason for that. One is  
22 that the settlement administrator says it is a bad idea  
23 before you've sent out individual notice to put up a website  
24 that people can go to. Because it creates a great deal of  
25 activity and confusion before people have actually received

1 the notice that should be getting the notice explaining what  
2 exactly they should be doing.

3 So the website will have information about the  
4 settlement, will have the notice up and people can also look  
5 at the claim form. But the claim submissions won't begin  
6 until after or a few days before direct notice is actually  
7 going out to the consumers. It will also inform them they  
8 should check back at about that time.

9 The claims process, just to detail that, is  
10 basically broken down into two different categories. And  
11 that is consumers with -- who have documents demonstrating  
12 the losses as a result of the Target breach, and those  
13 consumers who either don't have documents or their amounts  
14 aren't high enough for them to want to put documents in and  
15 they are simply going to self-certify that they have  
16 suffered a specific type of injury that is identified in the  
17 claim form.

18 And the claim form sets forth these categories of  
19 loss that will mean a Class member qualifies to make a  
20 claim. The first is unauthorized unreimbursed charges on a  
21 credit or debit card. The second is, time spent addressing  
22 unauthorized charges on a credit or debit card. The third  
23 is cost to hire someone to help correct a credit report as a  
24 result of a problem related to the Target data breach.  
25 Higher interest rate on an account or highest interest fees

1     paid as a result of the breach; loss of access or restricted  
2     access to funds as a result of the breach; fees paid on an  
3     account, late fees or overdraft fees -- again, that are  
4     unreimbursed and caused as a result of the Target breach;  
5     credit-related costs for people that went on and purchased  
6     their own credit monitoring, identity theft protection or  
7     had to place freezes on certain accounts. Any of those  
8     costs would qualify, or costs to replace a driver's license  
9     or a state identification card. Or there is another  
10    category where a Class member could delineate, here is a  
11    loss that I suffered of unreimbursed costs that were not  
12    listed in your examples that you gave.

13           The payments under the -- out of the fund will be  
14    made first to those who have documented claims. In other  
15    words, if someone has a receipt that shows they shopped at  
16    Target and it shows an unauthorized charge that was not  
17    reimbursed and can demonstrate documents or other issues  
18    that resulted from that unauthorized charge and fees that  
19    were unreimbursed, those will receive priority payment  
20    because those people, we believe, have the exact proof to  
21    prove the losses that they have suffered that have not been  
22    reimbursed.

23           Whatever is left over after payments under the  
24    documentary loss category and after any service payments  
25    that the Court would award to the Class representatives, the

1 remainder will be divided for qualifying self-certification  
2 claims in equal shares. And that is why I said we hope to  
3 be able to distribute the entire remainder to those people.  
4 It is impossible to know what that number is going to be  
5 because this Class is inherently self-identifying.

6 In other words, if they don't come forward and  
7 tell us the type of loss or demonstrate the type of loss  
8 they had, we don't know how to otherwise independently  
9 identify them, because there are people in the Class who  
10 simply didn't have one of these categories of loss.

11 As I said before, the notice will be handled by  
12 Kinsella Media, and it will involve -- the majority will be  
13 direct notice. In other words, notice going directly to  
14 people with whom Target has identified email addresses or  
15 mailing addresses. For people that have not been identified  
16 with either of those, that is where we get into the print  
17 media and we also get into the banner advertisements,  
18 national press releases, and also other sponsored links  
19 online.

20 Rust will also maintain -- the settlement  
21 administrator will also maintain a website, in which  
22 information about the settlement, information about the  
23 claims processing will be available, including frequently  
24 asked questions. It will be a fully functioning website.

25 There will also be a toll free number for people

1 to call, which will not only have interactive voice  
2 recording to answer questions people may have, but they will  
3 be able to connect with a live operator if none of those  
4 pre-recorded answers satisfy.

5 As far as the legal requirements of the  
6 settlement, it is set forth in the brief that we filed in  
7 support of the motion. We believe that when settling -- a  
8 Settlement Class is going to satisfy all of the Rule 23  
9 requirements. And given it is a Settlement Class, does not  
10 need to satisfy any of the manageability issues that would  
11 normally be imposed in a litigation class.

12 We also believe that it satisfies the standards  
13 for preliminary approval because at this point, the question  
14 before the Court is whether this settlement falls within the  
15 range of possible final approval. And we believe -- we have  
16 set forth these arguments in the brief, that when you weigh  
17 the merits of Plaintiffs' case against the settlement terms  
18 and the uncertainty of future litigation, the uncertainty of  
19 class, the uncertainty of proving a causal connection for  
20 the majority of Class members, we believe mitigates in favor  
21 of the Court approving this settlement for preliminary  
22 approval.

23 That is all I have.

24 I only had one other item to reference in the  
25 Preliminary Approval Order, Your Honor. We have provided a

1 space for a nominal bond under Rule 65. This is a little  
2 bit of an interesting issue, because in many cases, we  
3 believe that the Court, as an MDL court, has broad authority  
4 to protect its jurisdiction and to effectuate its  
5 jurisdiction in these types of settlements by simply staying  
6 all the cases. There is a question of whether that bleeds  
7 into Rule 65 or not.

8 Rather than get into that philosophical debate, we  
9 have provided for a nominal bond, and we think that that  
10 short time period between now and an opt-out objection  
11 deadline of July 31 is absolutely -- I think will absolutely  
12 take care of any issues that could possibly occur. I can't  
13 imagine any would, but on the safe side, we provided for it  
14 in the Preliminary Approval Order.

15 THE COURT: Well, I think, counsel -- I appreciate  
16 that. And there can be philosophical discussions about  
17 this. And it might be more than just philosophical; it may  
18 be legal. But the reality is, you read Rule 65, there is a  
19 word called "will." And I generally think I know what that  
20 means. But, on the other hand, in this type of settlement,  
21 that's -- this is not the kind of thing that the drafters  
22 were really thinking about in Rule 65 when they put the word  
23 "will" in there, I think. And so I don't have a lot of  
24 difficulty with this.

25 MR. ESADES: Yeah. And I think the fact that no

1 one has so much uttered the word that they want to proceed  
2 individually in this case on behalf of one consumer -- on  
3 behalf of that consumer's damages, I think also supports  
4 that reading.

5 THE COURT: Yes.

6 MR. ESADES: I am available for questions right  
7 now, but that is the basic outline.

8 THE COURT: Okay, thank you very much.

9 Mr. McDowell, would you like to advise me?

10 MR. McDOWELL: I don't have anything to add. I  
11 think Mr. Esades went through the terms of the settlement.  
12 I will advise you that Target does not oppose entry of the  
13 Preliminary Approval Order. And as Target is already  
14 receiving calls about it, we are hopeful that that is  
15 sooner, rather than later.

16 THE COURT: So am I.

17 Okay. Thank you, Mr. McDowell.

18 Anybody else, first of all, on the Plaintiffs'  
19 side, anyone else that wants to make any comments? And on  
20 the Defense side, anybody else want to make any comments?

21 Okay. Well, very well. I guess my reading of  
22 last night was more than 12 minutes after you filed, but  
23 nevertheless, I have had an opportunity to review, so this  
24 is not by any means coming as a direct response or a  
25 surprise to me of any kind. I am prepared to enter the

1 Preliminary Order and will do so.

2 I have indicated one cautionary -- you know, I am  
3 not supposed to give advisory opinions, but I am. I will  
4 enter that one cautionary comment and it has to do with this  
5 one date. It's the one blank in the whole thing, and then I  
6 am the holdup on it. But I tried to find out the answer to  
7 that and was not successful. Because, quite frankly, I  
8 didn't think about it until yesterday. I just wasn't  
9 successful in finding out this morning. So, I think by this  
10 afternoon I will have an answer on it. And we will let you  
11 know as we enter the Order with respect to that -- with  
12 respect to that date.

13 Let me add a few comments on this preliminary  
14 resolution matter. I start by giving a very large thank you  
15 to two people that are not here, one of whom you normally  
16 see sitting with me, he's out of town, that's Judge Keys,  
17 and for the diligent work and effort that he has put into  
18 this case. And I would be completely remiss if I did not  
19 say a very special thank you to Judge Boylan for his efforts  
20 on behalf of this matter.

21 And then I guess when I put those thank you's in,  
22 I put the thank you's in to all of the lawyers that are  
23 sitting here in front of me. Settlements of cases of this  
24 kind occur, but they don't occur without a lot of hard work.  
25 I respect it, I appreciate it, and I thank you for that hard

1 work that has gone into this.

2 This is not just throwing a dart or flipping a  
3 judicial nickel, there's a great deal of effort that goes  
4 into this kind of resolution.

5 And so to the Plaintiffs in taking all of these  
6 matters into consideration and working hard on behalf of  
7 their clients, which really I think is very commendable when  
8 you think about -- when you have 113 named Plaintiffs and  
9 112 of them have given approval to this.

10 And obviously, they haven't known about it for a  
11 long time, I think that's very commendatory. And I  
12 certainly understand that that 113th may have moved or  
13 whatever happened. I know a little bit about this because  
14 we were having our mail forwarded recently and my wife's  
15 driver's license expired. Before we got the mail to be  
16 forwarded, she had gone in to get the new driver's license.  
17 And all of a sudden we discovered she didn't have a driver's  
18 license because the Postal Service doesn't forward mail on  
19 driver's licenses. So, you run into things like that, and  
20 so I understand and respect that.

21 And then I also just want to take this opportunity  
22 to the Target Corporation for resolving this. A, this is a  
23 lot of money. But B, we have customers and we have citizens  
24 in this community and throughout the country, and I think  
25 Target really, really needs to be commended for being

1 willing to step up in this and get these consumer cases on  
2 their way to resolution.

3 We all read newspapers. I guess, 12 minutes  
4 later -- I get a kick out of that, how fast this world  
5 moves. But, Target has had a lot of words in the newspaper  
6 recently. And apparently, when I look at the stock value,  
7 they are good responses. And I just do really, really  
8 commend a good citizen of this community that has done so  
9 much in this community in the past and continues to do so,  
10 for coming to this preliminary resolution. And time will  
11 tell, of course, but I would hope that it will all move in  
12 an appropriate direction from this point.

13 So, with that, I think I will just conclude my  
14 comments with thanking you for your comments, and I  
15 anticipate that we will be executing an Order with a final  
16 approval date very, very soon. So, with that, I thank you.  
17 Thank you for coming in today.

18 I have not opened another door, because I just  
19 think that one piece of heavy substantive business is about  
20 enough for an agenda on one day; but, I would appreciate it  
21 if those counsel that are involved on the financial  
22 institution side of this could step back into chambers with  
23 me and I could have a brief chat with you in just a few  
24 minutes, I would appreciate it.

25 With all of that, thank you very much. And unless

1       there is something else, we will stand adjourned.

2               Okay, thank you.

3               (Adjournment.)

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7                               \*       \*       \*

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

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