

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 2, 2015
 All Actions) 2:00 p.m.
)

BEFORE **THE HONORABLE PAUL A. MAGNUSON**
 UNITED STATES DISTRICT COURT JUDGE
 BEFORE **THE HONORABLE JEFFREY J. KEYES**
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

PRELIMINARY APPROVAL OF SETTLEMENT HEARING

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P R O C E E D I N G S

I N O P E N C O U R T

THE HONORABLE JUDGE PAUL MAGNUSON: Good afternoon.

ALL COUNSEL: Good afternoon.

THE HONORABLE JUDGE PAUL MAGNUSON: I guess we are here for a little bit more than a routine status conference. So, Mr. Zimmerman, you want to pass the news on to me?

MR. ZIMMERMAN: Thank you, Your Honors. May it please the Court? The Financial Institution Plaintiffs in the Class have reached a settlement with Target Corporation to resolve claims arising from the data breach of December 19th, 2013.

Financial Institutions that have now already released their claim will benefit from the approximately \$39 million Settlement Fund. These funds will be in addition to all amounts provided by Target through the Visa Global Compromised Account Recovery Program, and the Settlement will provide significant relief to the Financial Institutions. And we believe it lies well within the realm of reasonableness necessary to establish that it be appropriately approved under Rule 23(e).

We are here today to ask the Court for a preliminary approval, to direct notice to the Class, to set deadlines for exclusions, objections and briefing, and to

1 set a date for determination of attorneys' fees, costs and
2 service awards, and a final fairness hearing. We want to
3 tell the Court that based upon the math, as we have done it,
4 a final approval hearing would have to be set sometime on or
5 after April 15th of 2016.

6 Your Honors, on December 1, yesterday, the
7 Financial Institutions and Class Counsel for the Class
8 entered into the Settlement Agreement and Release and it is
9 attached as Exhibit A to my Declaration.

10 Plaintiffs and Target have agreed to resolve all
11 claims asserted in the Financial Institution Class cases and
12 all of the cases that were consolidated before Your Honors
13 in the MDL Litigation.

14 As I said, Target will provide a Settlement Fund
15 of \$39 million to be distributed to Class members, pursuant
16 to a distribution plan which is attached as Exhibit A-1, as
17 well as a plan under the MasterCard Account Data Compromise,
18 which is called the ADC, a recovery program, as well as they
19 will pay the Class notice and administration costs. That is
20 the overview.

21 Let me explain the benefits in real language to
22 Your Honors, because I think it is important. Because
23 financial institutions had different losses based upon their
24 per card costs, we devised a plan with Target where we have
25 a protocol that banks can decide to be compensated with two

1 different options.

2 The one option is to make a claim and register
3 their claim and receive \$1.50 per compromised account, and
4 this \$1.50 is over and above what they received in the
5 MasterCard ADC Program, or the Visa Global Compromise
6 Account Recovery Program, referred to as the G Card. That
7 is \$1.50 more than what they have already received under
8 these programs. Or --

9 THE HONORABLE JUDGE PAUL MAGNUSON: Let me ask a
10 question. I have asked this before and I never got any kind
11 of response, and that is, what if you happen to use American
12 Express?

13 MR. ZIMMERMAN: I will talk about that. American
14 Express had a separate settlement which we agreed they could
15 negotiate separately. And they have, and counsel will
16 advise you, they will correct me if I am wrong, they have
17 entered into a separate settlement effective, I believe,
18 yesterday with American Express. And that entire group of
19 American Express card holders will not participate, but they
20 are actually having their own Settlement, because they are
21 called the Closed Loop.

22 And although they were originally in the Class, we
23 agreed when we negotiated this Global Settlement that they
24 could negotiate separately with American Express. Now, I
25 will tell you this, and I think American Express did better

1 because of what we did here, but that is my opinion. And I
2 am a plaintiff's lawyer.

3 THE HONORABLE JUDGE PAUL MAGNUSON: That is right.

4 MR. ZIMMERMAN: And I brought a smile to your
5 faces, so that --

6 THE HONORABLE JUDGE PAUL MAGNUSON: I forgot about
7 that.

8 MR. ZIMMERMAN: So, you have door one, which is
9 the \$1.50, just file a claim form over and above what you
10 already received from either one of the Visa or MasterCard
11 Programs. Or, you can take option two, which allows you to
12 file a claim for your re-issuance cost, your other costs
13 related to the data breach, your fraud losses, and you will
14 receive up to 60 percent of your amount.

15 Now, you say, well, why 60 percent? Because it is
16 very hard -- it was a compromise, but it is very hard to
17 determine what of these losses were necessarily related to a
18 Target breach. It may have been a Home Depot breach, or a
19 Neiman Marcus breach, which were somewhat close in time.
20 So, we agreed that they would receive 60 percent of their
21 total losses, assuming that these losses can be verified and
22 there will be a claims process to make sure that their
23 losses for their fraud, and losses for their re-issuance,
24 and losses for their back offices are properly tabulated by
25 the Claims Administrator.

1 So, you have option one, the easy route, take 1.50
2 over and above what you already received, or get your actual
3 losses to 60 percent in Door B. One is called the Fixed
4 Premium and the other is called the Documented Support
5 Program.

6 Further, Target, out of the \$20 million plus that
7 they are putting up are going to pay all costs associated
8 with best notice practical, and all costs of administration.
9 The settlement also requires, and this is over and above the
10 \$39 million, that of the Class representatives' service
11 awards, Class representative service awards, attorneys' fees
12 and costs as awarded by the Court will be paid over and
13 above the \$39 million.

14 Target has agreed to pay this amount, and we agree
15 that it does not in any way decrease the Class Members'
16 benefit, but they have reserved the right to object to
17 whatever we might petition for and we will have a full
18 hearing on the amount at the Fairness Hearing.

19 THE HONORABLE JUDGE PAUL MAGNUSON: I take it your
20 administrative costs are?

21 MR. ZIMMERMAN: The administrative costs would be
22 the Claims Administrator, which we have a fixed bid on, and
23 any costs associated with the Claims Administration Notice.
24 And we think it will be fairly modest, Your Honor. The
25 reason we say that is we got bids. We did a competitive

1 bidding, and we know it is a fairly small-sized class in the
2 scheme of things, under seven, 8,000 institutions.

3 Finally, Your Honor, and this is significant, as a
4 condition of the Visa G Card Settlement, and settling with
5 the numerous MasterCard-issuing banks, as you know when we
6 were before Your Honor, Target required as an express part
7 of those early settlements, and many banks took them as an
8 express part of that; that they signed full releases. And
9 they did all of this before we were able to get into court
10 and have the Class certified.

11 And in that regard, Your Honor, as I said before,
12 we think those settlements that they did early, where they
13 wanted full releases of this case, and where they did them
14 before Class certification, they paid approximately \$100
15 million in those arrangements. And we think, as I said
16 before, we contributed to those being better than they would
17 have otherwise been had we not been pushing very hard in
18 this litigation and driving Class and driving the discovery
19 as we did. Those are what we call the network settlements
20 which we believe have a combined value of over \$100 million
21 paid to date.

22 Let me go into briefly on the notice and
23 administration, and then I will sum up and tell you why I
24 think it should be preliminarily approved. Parties have
25 selected Dahl Administration LLC to be the Settlement

1 Administrator. We sent this out to six in competitive bids
2 with all of the named administrators that Your Honors, I am
3 sure, are familiar with. And Dahl came in with the most
4 competitive bid. The Notice Program will be as follows:
5 One, a long formal notice mailed by U.S. Mail to all of the
6 named financial institutions that we have been able to
7 acquire a list from, and we have a pretty comprehensive
8 list. That will be by direct mail, and they will be sent by
9 Dahl. And a copy of that has been attached to my Affidavit,
10 or as Exhibit A-3 -- excuse me Exhibit A-3(a) and A-3(b) of
11 the Dahl Declaration. And we think it is clear, it is
12 concise, and it gives the opportunity for anyone who has
13 questions to address them through a dedicated website and a
14 dedicated call-in number for questions, and to allow them
15 explanation on how to exclude themselves. So, that is the
16 long-form notice which is very comprehensive, which will be
17 mailed.

18 In addition to that, Your Honors, there will be a
19 short-form notice, which is essentially Exhibit A-4. And
20 there will web banners, emails, newsletters, social media,
21 and what we call earned media where these -- where the
22 notice of the Settlement will be put out in a short form
23 alerting them that they can call an 800 number or log on to
24 a website or even call Class Counsel. So, that will be the
25 short form. So, we have both the long-form mailed, and the

1 short-form by social media and email. In addition, there
2 will be a 24-hour help line, or hot line to answer questions
3 regarding the Settlement.

4 Finally, Dahl will be responsible for accounting
5 for all claims, tabulating requests for exclusions,
6 disbursing funds from the escrow account after claims are
7 made, and reporting all communications, all notice, and all
8 claims administration processes to the Court. That will be
9 their obligation.

10 We think, as I said, it is a very competitive bid
11 and we are very happy we are going to save the fund a lot of
12 money because it is a really good bid that we got from Dahl.

13 Why is it fair, Your Honor? Why are we asking you
14 to approve it? This litigation is ripe for global
15 resolution, because even though it has been fewer than two
16 years since the original breach, and five institutions have
17 stepped up to be Class representatives, we have done
18 extensive work figuring out what this case was about, who
19 knew what and when, what happened and why, and what the
20 story of the data breach was.

21 We have had volumes of discovery, voluminous
22 discovery, millions and millions of pages of documents. We
23 have deposed 49 witnesses. And in addition to that, we have
24 kept in close contact with the Class Members. We have
25 written to them, we have talked to them, we have had

1 webinars with them. We have even been in communication with
2 American Express and their General Counsel, because they
3 were seeking information about what was going on, what can
4 you share with me, what is the nature of things. So, we
5 have had communication with like American Express, like we
6 said, Capital One, another one, which was a big bank which
7 we kept close communication with, and many, many others,
8 lots of smaller institutions and lots of credit unions.

9 In addition, Your Honor, this case was certified
10 as a Class, pursuant to Rule 23. We had extensive briefing
11 and extensive hearings on that. And we all know that Target
12 made a motion to exclude experts, which we provided to the
13 Court with regard to damages methodology.

14 Within weeks then of, Your Honor, the Class
15 Certification, the parties agreed to mediate. And we
16 mediated intensively before one of the District's and
17 perhaps one of the Country's most experienced mediators, the
18 former Chief Magistrate Judge of this District, Judge Arthur
19 Boylan.

20 We had vigorous negotiations over three sessions.
21 I can tell you this, the mediation was highly contested.
22 Both sides were willing to continue to litigate. And we
23 weren't, either one of us, afraid or concerned about going
24 forward with the litigation. And the negotiations were hard
25 fought, they were at arm's length, they were conducted

1 highly professionally, and at times quite adversarially.
2 Both sides have intimate knowledge of the record. And most
3 importantly, we reached a consensus agreement after these
4 three, hard-fought sessions.

5 The Agreement also provides, Your Honor, which was
6 negotiated after all of the terms of the Settlement were
7 agreed to, really in a separate session of the mediation,
8 Target agreed to pay attorneys' fees and costs approved by
9 the Court. And as I said, this was negotiated only after
10 all of the substantive terms of the settlement were agreed
11 upon.

12 Your Honor, the proposed Settlement meets the
13 standards for preliminary approval. We believe the Court
14 should determine that Settlement is within the range of
15 approval, and that is the responsibility of Your Honors. I
16 think the law strongly favors resolving cases in class
17 context when they are represented to be fair by experienced
18 and able counsel who have conducted mediations in an open
19 and fair fashion before a mediator that has been appointed
20 and respected by the Court. We have met all of the
21 requirements of Rule 23.

22 And most importantly, Your Honor, both sides knew
23 their case very well. This was not a case where anyone was
24 painting on a blank canvas. We all knew strengths, we all
25 knew weaknesses. We all had our hands on the table.

1 The Courts are attaching an initial presumption of
2 fairness when there is arm's length negotiations between
3 capable and experienced counsel. Both Karl Cambronne and
4 myself have been down this road a few times, many times
5 before this Court. We knew our legal theories. We could
6 assess our merits and the merits of the case, and we could
7 assess the defenses.

8 We think the Settlement is fair and reasonable and
9 we think the Court should preliminarily approve and we will
10 get feedback from the Class and have a fairness hearing
11 sometime after April 15th.

12 In conclusion, Your Honor, the Settlement is a
13 strong Settlement, an important, significant result for
14 those financial institutions that sustained losses as a
15 result of the Target data breach about two years ago. The
16 settlement will provide compensation well beyond what card
17 brand networks and Target previously offered before we
18 became involved in the Settlement.

19 Some financial institutions chose to settle early.
20 If they did and signed a full release, they are resolved.
21 We feel even those who settled early did better because of
22 our efforts. But, those Class members that we now represent
23 who remain in the Class will do considerably better under
24 today's Settlement.

25 We are happy to advocate and support this first of

1 its kind Financial Institution Class Settlement stemming
2 from a merchant data breach. Thank you, Your Honors.

3 THE HONORABLE JUDGE PAUL MAGNUSON: All right.
4 Thank you, Mr. Zimmerman.

5 Ms. Visser?

6 MS. VISSER: Good afternoon, Your Honors. I
7 wanted to open with saying that as noted in the meet and
8 confer statement, Target supports the entry of a proposed
9 preliminary approval order. And by and large Mr. Zimmerman
10 did a great job of summarizing the Settlement. So, I have
11 very little to add there.

12 I just want to correct one thing that he
13 mentioned, and that relates to Your Honor's question about,
14 for example, the AMEX issuers. Mr. Zimmerman is correct
15 that Target has reached a settlement with both AMEX and
16 Discover, is the other example that might be applicable
17 here --

18 THE HONORABLE JUDGE PAUL MAGNUSON: I was going to
19 ask you about Discover. I didn't even think they existed
20 anymore.

21 MS. VISSER: I think we can probably address both
22 of those in one fell swoop, here. So, in those cases the
23 agreements that were reached resulted in releases of the
24 vast majority of AMEX and Discover accounts that are at
25 issue here. And that is because, as was noted, most of them

1 operate largely in what is called the Closed Loop. In both
2 cases, though, there are a very, very small minority of
3 third-party issuers.

4 And in each of those two Settlements, those
5 third-party -- there are at least some third-party issuers,
6 I should say, that did not release claims; and therefore,
7 they do remain in the Class.

8 As to those issuers, the way the Settlement
9 operates is very similar to the Visa issuers that remain in
10 the Class. They will still have the exact two options:
11 Door A, they can choose 1.50 per count, which would go above
12 and beyond anything that they may have received as part of
13 those settlements; or Door B, they can take the option of
14 submitting the detailed information on their claimed losses,
15 and the same formula would apply whereby we would calculate
16 60 percent of that. And then from that that would be a
17 reduction based on any amount that they received through the
18 Settlement. So, it would be the same basic operation as we
19 would have for the other types of Visa or MasterCard
20 issuers. Thank you.

21 THE HONORABLE JUDGE PAUL MAGNUSON: Thank you very
22 much. Anything further from anybody?

23 MR. ZIMMERMAN: No, Your Honor.

24 THE HONORABLE JUDGE PAUL MAGNUSON: I guess in the
25 document that I have been handed that you have been kind

1 enough to prepare, I see two blanks. And the first of those
2 blanks is the date for the Final Approval Hearing. I am
3 going to ask a question. Is either Tuesday, May 10 or
4 Thursday, May 19th, too long or too little? Or can you live
5 with that?

6 MR. ZIMMERMAN: As a plaintiff's lawyer, we like
7 the sooner the better, Your Honor, but either one of those
8 days would be sufficient.

9 THE HONORABLE JUDGE PAUL MAGNUSON: Well, you know
10 full well what is going on there, and that is that I am
11 scheduled through April to be in Florida and returning in
12 early May. And if you can live with it, fine. If for some
13 reason either of you were to tell me that I have got to come
14 back in late April for a day to do this, I would.
15 Otherwise --

16 MR. ZIMMERMAN: May 10th, did you say, Your Honor?

17 THE HONORABLE JUDGE PAUL MAGNUSON: May 9th. I'm
18 sorry, no, no. I'm sorry, I apologize. It is May 10th.
19 Tuesday, May 10.

20 MR. ZIMMERMAN: Perfect.

21 THE HONORABLE JUDGE PAUL MAGNUSON: Is morning or
22 afternoon better, Ms. Visser? You travel the farthest.

23 MS. VISSER: Either one is fine with us, as well.

24 THE HONORABLE JUDGE PAUL MAGNUSON: Frankly, I am
25 likely to be in trial at that time, so I am going to suggest

1 we do it at 2:00 in the afternoon. I can recess after a
2 morning's trial.

3 MR. ZIMMERMAN: At 2:00?

4 THE HONORABLE JUDGE PAUL MAGNUSON: Tuesday, May
5 10 at 2:00 in the afternoon. And I better write it down.
6 Okay. With that, magical signature goes on it and we'll
7 move forward from here.

8 Let me take a moment at this point to -- because I
9 had some to-do's. Number one, I appreciate your -- because
10 I think we were really scheduled for tomorrow, originally.
11 I didn't plan to come in. And you can tell by my voice it
12 is advisable that I get to the Mayo Clinic as soon as I can.
13 And the first day I could get an appointment was tomorrow.
14 So, thank you for coming in today.

15 The second thing is I would like to thank Judge
16 Keyes for all of the work he has done on this case. I
17 remember -- I think now nearly two years ago, when this
18 first came up, my desire was that Judge Keyes can be
19 appointed as the Magistrate Judge on the case because he
20 whispered in my ear and I know who to listen to. So, I
21 thank you very much.

22 And also, he is not here, but I just thank Judge
23 Boylan. He is quite a remarkable individual in the talent
24 and gift of resolution of cases in a most difficult
25 circumstance. And I am sure probably all of you get a

1 little nervous when you go to lunch and you run into him in
2 the skyway, because you know you are not going to avoid him.
3 He is going to work on you a little bit. So, my thanks goes
4 to Judge Boylan.

5 And finally to counsel on both sides, and I speak
6 not only to counsel present in the courtroom, but also to
7 the General Counsel and the other people that are behind the
8 scenes on this. This is a major piece of litigation, there
9 is no getting around that.

10 I have expressed several times to you in one way
11 or another that, you know, one of these data breach cases
12 really needs to go to trial because we do need to make some
13 law on this subject. And I say that with all genuineness
14 and total belief. The only thing is, I am just so very
15 thankful it is not this case. It would be a lot of work not
16 only for you, but it would be a lot of work for a Court that
17 had to make many decisions on a blank sheet of paper in that
18 there is very little law established with respect to the
19 case.

20 And finally, to those of you in the courtroom, I
21 highly admire your work. You have helped professionally at
22 every stage of the proceeding. You've involved both Judge
23 Keyes and myself at a minimum of time, and anytime it has
24 involved us, it is on matters that are very appropriate to
25 be passed on to the Courts. So, I commend you. I thank you

1 for the efforts that you have put in.

2 I know that we are not done. I know that there
3 may be some people who will have some comments to make
4 before the matter is totally completed, but I do thank you
5 for reaching what is really a major pinnacle in the case
6 from here on in, it's a testing of the details.

7 So, with all of that, the Order is signed and
8 thank you so much for coming in today. And we will go
9 forward from here and I will see you in early May.

10 THE HONORABLE MAGISTRATE JUDGE JEFFREY KEYES: Can
11 I say one thing? Just my own appreciation for a job well
12 done, as Judge Magnuson said, as we talked about this case
13 about two years ago, I did anticipate that an enormous
14 amount of my time would be spent on discovery disputes and
15 other pretrial matters; and it wasn't. And I think it is a
16 real credit to the professionalism of counsel and the
17 extraordinary efficiency with which you did proceed in
18 difficult circumstances.

19 And we were commenting about how it is kind of
20 remarkable that all of this started just two years ago. And
21 when you consider the length these types of cases often take
22 around the country, I think that this is a great credit to
23 Judge Magnuson in the District in the way we process cases,
24 but also to you lawyers that appear before us. So, you
25 certainly have my deep gratitude, as well. And I am sure,

1 Judge Boylan, as well.

2 THE HONORABLE JUDGE PAUL MAGNUSON: Thank you,
3 Judge. I guess I will add one more, too. I think of that,
4 too, and I thank your clients. Clients are pretty important
5 people.

6 MR. ZIMMERMAN: I just want to thank the Court for
7 always being available to us. It is just, as counsel, it is
8 so wonderful and keeps us all on track when we know the
9 Court is listening and cares about the issues that confront
10 us and give us the time that we need and we appreciate it
11 very, very much.

12 THE HONORABLE JUDGE PAUL MAGNUSON: Thank you.
13 Okay, before all of these nice statements throw us out of
14 our adversarial role, we better adjourn. See you in a
15 couple of months.

16 ALL COUNSEL: Thank you, Your Honor.

17 (Adjournment.)

18 * * *

19 I, Jeanne M. Anderson, certify that the foregoing
20 is a correct transcript from the record of proceedings in
21 the above-entitled matter.

22
23
24 Certified by: s/ Jeanne M. Anderson
25 Jeanne M. Anderson, RMR-RPR
Official Court Reporter