

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: Target Corporation Customer Data
Security Breach Litigation

MDL No. 14-2522 (PAM/JJK)

This Document Relates to:

The Financial Institution Cases.

ORDER

This matter came before the Court on the Plaintiffs' Motion for Modification of the Class Definition and for Preliminary Approval of Class Action Settlement (ECF No. 589) (the "Motion"). Terms not defined herein shall have the meaning set forth in the Settlement Agreement and Release attached as Exhibit A to the declaration of Charles S. Zimmerman in support of the Motion ("Zimmerman Decl.").

Umpqua Bank, Mutual Bank, Village Bank, CSE Federal Credit Union, and First Federal Savings of Lorain (the "Named Plaintiffs") filed a Consolidated Class Action Complaint (ECF No. 163) on August 1, 2014 ("Financial Institutions Complaint"). In their Complaint, the Named Plaintiffs allege various claims against Defendant Target Corporation ("Target") arising out of the payment card data breach that was publicly disclosed by Target on December 19, 2013 (the "Data Breach"), including negligence, negligent misrepresentation by omission, violation of the Minnesota Plastic Card Security Act, Minn. Stat. § 325E.64, and negligence per se. On December 2, 2014, following briefing and a hearing, the Court issued a Memorandum and Order (ECF. No. 261),

granting in part and denying in part Target's motion to dismiss the Financial Institutions Complaint.

The Named Plaintiffs filed a motion for certification of a Rule 23(b)(3) class and appointment of class representatives and class counsel, which Target opposed, and the Court granted by Order dated September 15, 2015 (ECF. No. 589) (the "Class Certification Order"). In the Class Certification Order, the Court appointed the Named Plaintiffs as "Class Representatives" and appointed Zimmerman Reed PLLP; Chestnut Cambronne PA; Reinhardt Wendorf & Blanchfield; Lockridge Grindal Nauen P.L.L.P.; Barrett Law Group, P.A.; Levin, Fishbein, Sedran & Berman; Kessler Topaz Meltzer & Check LLP; Carlson Lynch Ltd.; Scott + Scott LLP; Hausfeld LLP; and Beasley, Allen, Crow, Methvin, Portis Miles, P.C. as "Class Counsel."

Class Counsel has conducted a thorough examination, investigation, and evaluation of the relevant law, facts and allegations and has engaged in sufficient discovery to assess the merits of the claims set forth in the Actions and in the Financial Institutions Complaint and Target's liability and defenses thereto.

The Class Representatives, by Class Counsel, and Target, by Target's counsel, have entered into a Settlement Agreement following good faith, arm's length negotiations and mediation overseen by retired Magistrate Judge Arthur J. Boylan, in which the Parties have agreed to settle actions that were consolidated for pre-trial purposes in this MDL proceeding and the Financial Institutions Complaint, pursuant to the terms of the Settlement, subject to the approval and determination of the Court as to the fairness,

reasonableness and adequacy of the Settlement which, if approved, will result in dismissal of the Actions and the Financial Institutions Complaint with prejudice.

The Court having reviewed the Settlement Agreement and Release, including the exhibits attached thereto (together, the "Settlement Agreement"), and all prior proceedings herein, and good cause appearing based on the record,

Accordingly, **IT IS HEREBY ORDERED:**

1. **Defined Terms.** The Court, for purposes of this Preliminary Approval Order, adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein. *See* Zimmerman Decl. (Settlement Agreement attached as Exhibit A).

2. **Class Certification for Settlement Purposes Only.** The Settlement Agreement provides for a Settlement Class defined as follows:

All entities in the United States and its Territories that issued Compromised Payment Cards.

Excluded from the class are all entities that previously released Target with respect to all of the Compromised Payment Cards that they issued, and all entities that validly request exclusion from the Settlement Class pursuant to 4.4.1 of the Settlement Agreement.

For settlement purposes only, the class definition set forth in the Class Certification Order is hereby **MODIFIED** to be the same as that stated in the previous paragraph and the Settlement Class is certified pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Court finds for settlement purposes that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the

Settlement Class Representatives (defined below) are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel (defined below) will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

3. **Settlement Class Representatives and Settlement Class Counsel.** The Court appoints the Class Representatives as “Settlement Class Representatives.” The Court finds that the Settlement Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Settlement Class Representatives. The Court finds that the following firms and individuals are experienced and adequate counsel and hereby appoints them as Settlement Class Counsel pursuant to Fed. R. Civ. P. 23(g):

CHESTNUT CAMBRONNE PA
Karl L. Cambronne
Jeffrey D. Bores
Bryan L. Bleichner
17 Washington Avenue North, Suite 300
Minneapolis, MN 55401
Telephone: (612) 339-7300
kcambronne@chestnutcambronne.com
jbores@chestnutcambronne.com
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ZIMMERMAN REED, LLP
Charles S. Zimmerman
J. Gordon Rudd, Jr.
Brian C. Gudmundson
David M. Cialkowski
1100 IDS Center, 80 South 8th St.
Minneapolis, MN 55402
Telephone: (612) 341-0400
charles.zimmerman@zimmreed.com
gordon.rudd@zimmreed.com
brian.gudmundson@zimmreed.com
david.cialkowski@zimmreed.com

4. **Preliminary Settlement Approval.** The Court finds that the Settlement is fair, reasonable and adequate to warrant providing notice of the Settlement to the Class and accordingly the settlement is preliminarily approved.

5. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 332(d)(2), and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

6. **Final Approval Hearing.** A Final Approval Hearing shall be held on Tuesday, May 10, 2016 at 2:00 p.m. in Courtroom 7D of the Warren E. Burger Federal Building and U.S. Courthouse, 316 N. Robert Street, St. Paul, MN 55101, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to the modified class definition set forth above in Section 2; (b) the Settlement should be approved as fair, reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) the Actions and the Financial Institutions Complaint should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set

forth in the Settlement Agreement; (e) the application of Settlement Class Counsel for an award of attorneys' fees, costs and expenses (the "Fee Request") should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application of Settlement Class Representatives for Service Payments (the "Service Payments Request") should be approved.

The submissions of the Parties in support of final approval of the Settlement shall be filed with the Court no later than thirty (30) days before the Final Approval Hearing and may be supplemented up to seven (7) days before the Final Approval Hearing.

Settlement Class Representatives' Service Payments Request and Settlement Class Counsel's Fee Request shall be filed with the Court at least 21 days before the deadline for submission of Objections.

7. **Administration.** The Court appoints Dahl Administration as the Settlement Administrator, with responsibility for class notice and claims administration. Costs of administration of the Settlement and notice shall be paid from Target's initial \$500,000 payment of a portion of the Settlement Fund to the Settlement Class Escrow Account. To the extent that the costs of administration of the Settlement and notice exceed \$500,000, such costs shall be paid out of the remainder of the Settlement Class Escrow Account; Target shall not bear any obligations relating to such costs.

8. **Notice to the Class.** The proposed plan for notification of Class Members set forth in paragraphs 7-24 of the Declaration of Jeffrey D. Dahl, the Notices attached to the Settlement Agreement as Exhibits 3-4 and the claim forms attached to the Distribution Plan, which is Exhibit 1 to the Settlement Agreement, are hereby approved.

Within twenty (20) days of entry of this Order, the Settlement Administrator will send notice by United States Mail to all Settlement Class for which Settlement Class Counsel has a United States postal address. Settlement Class Counsel shall supply such United States postal addresses to the Settlement Administrator no later than five (5) business days after this Order is entered. The mailed notice shall be substantially in the form of the Notice attached to the Settlement Agreement as Exhibit 3.

Thereafter, the Settlement Administrator will publish notice substantially in the form of the Notice attached to the Settlement Agreement as Exhibit 4 in accordance with the Notice Plan.

Within fifteen (15) days of the entry of the Preliminary Approval Order, the Settlement Administrator shall establish an Internet website that will inform Class Members of the terms of the Settlement, their rights, dates and deadlines, and related information.

Before dissemination of the notice, the Settlement Administrator shall establish a toll-free telephone number Class Members may call to obtain Settlement-related information.

Not later than fourteen (14) calendar days before the date of the Final Approval Hearing, the Settlement Administrator shall file with the Court a declaration setting forth the Settlement Administrator's execution of and compliance with the Notice Plan.

9. **Findings Concerning Notice.** The Court finds that the form, content and method of giving notice to the Class as described in Section 8 of this Order and the Notice Plan: (a) will constitute the best practicable notice of the Settlement to the Class;

(b) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Actions and Financial Institutions Complaint, the terms of the Settlement, and their rights under the proposed settlement, including but not limited to their rights to object to or exclude themselves from the Settlement Class and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that both of the Notices are written in plain language, use simple terminology, and are designed to be readily understandable by Class Members.

10. **Class Action Fairness Act Notice.** The Court has evaluated the Class Action Fairness Act Notice attached to the Settlement Agreement as Exhibit 8. The Court finds that the form, content, and manner of service of notice required by 28 U.S.C. § 1715 on the Attorney General of the United States, which this Court finds to be the “appropriate Federal official,” and the Attorneys General of each State, which the Court finds to be the “appropriate State Official[s],” complies with applicable law, including specifically the requirements of 28 U.S.C. § 1715. Within thirty (30) days after entry of this Preliminary Approval Order, Target shall file with the Court a notice of compliance with 28 U.S.C. § 1715.

11. **Exclusion from Class.** Any Class Member who wishes to be excluded (“opt out”) from the Settlement Class must mail a signed, written request for exclusion that includes the Class Member’s name, address, telephone number, statement that the

Class Member wants to be excluded, the name of this proceeding (*In re Target Corporation Data Security Breach Litigation*), and signature. No request to opt out shall be valid unless the Class Member completes and signs the written request for exclusion in the form of Exhibit 5 to the Settlement Agreement or alternatively sends a letter by U.S. Mail that includes all of the information set forth in the previous sentence, and sends such completed form or letter to the Settlement Administrator at the address provided in the Notices attached as Exhibits 3–4 to the Settlement Agreement, postmarked no more than ninety (90) days after the date the Preliminary Approval Order is entered.

Each Class Member that submits a request to opt out in accordance with the previous sentence shall be excluded from the Settlement Class. Each Class Member that does not submit a valid request to opt out, including Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Target Released Persons asserting any of the Plaintiff Released Claims, shall remain in the Settlement Class and shall be bound by all subsequent proceedings, orders and judgments relating to the Settlement, including but not limited to the Final Judgment, if it is entered.

Within seven (7) days after the date set forth in the Notices by which opt-out requests must be postmarked, Settlement Class Counsel shall cause the Settlement Administrator to send to Settlement Class Counsel and to Target's Counsel: (i) copies of all requests to opt out; and (ii) a report identifying (a) each Class Member that submitted a request to opt out; (b) the number of Eligible Accounts issued by each such Class Member, in accordance with the procedures set forth in Section 4.4.2.1 of the Settlement Agreement for determining such number; and (c) the Settlement Administrator's

determination as to the validity or invalidity of each such Class Member's request to opt out pursuant to the provisions of this Order and Section 4.4.1 of the Settlement Agreement (the "Opt-Outs Report"). Settlement Class Representatives, through Settlement Class Counsel, and Target, directly or through Target's Counsel, shall thereafter be permitted to contact Class Members as set forth in Section 4.4.2.2.

Within fourteen (14) days of the Settlement Administrator's delivery of the Opt-Outs Report pursuant to Section 4.4.2 of the Settlement Agreement and the preceding paragraph of this Order, the Settlement Class Representatives, through Settlement Class Counsel, and Target, though Target's Counsel, shall have the opportunity to submit a request that the Settlement Administrator correct any information included in the Opt-Outs Report that is believed to be incorrect, including but not limited to information regarding the number of Eligible Accounts actually issued by a Class Member (a "Correction Request"). Any such Correction Request must be emailed to the Settlement Administrator at Target Data Breach Settlement, c/o Dahl Administration, P.O. Box 3614, Minneapolis, MN 55403-0614 and delivered to all other Parties in accordance with Section 12 of the Settlement Agreement. The Parties shall meet and confer regarding any Correction Requests prior to submitting them to the Settlement Administrator. If there is disagreement among the Parties regarding a Correction Request, the Party disputing the Correction Request shall have three (3) business days following the submission of the Correction Request to submit a request that the Settlement Administrator reject the Correction Request.

If any party submits a Correction Request pursuant to the procedures set forth in Section 4.4.3 of the Settlement Agreement and the preceding paragraph of this Order, then Settlement Class Counsel shall cause the Settlement Administrator, not later than seven (7) days after the later of (i) the date of the Correction Request and (ii) the date of any objection or dispute regarding such Correction Request, to deliver to Settlement Class Counsel and to Target's Counsel another version of the Opt-Outs Report, incorporating any requested corrections that the Settlement Administrator determines should be made. Any Opt-Outs Report delivered pursuant to Section 4.4.4 of the Settlement Agreement and the preceding sentence of this Order shall supersede and replace any prior version of the Opt-Outs Report.

Following the time period for the submission of any Correction Request and, if applicable, the Settlement Administrator's delivery of another version of the Opt-Outs Report pursuant to Section 4.4.4 of the Agreement, and no later than fourteen (14) days before the Final Approval Hearing date, Settlement Class Counsel shall cause the Settlement Administrator to file the then-operative Opt-Outs Report with the Court. To the extent there is any dispute between the Parties regarding any determination made in the Opt-Outs Report filed with the Court, the Parties shall present such dispute to the Court for resolution no later than seven (7) days before the Final Approval Hearing date. In the event that no dispute is presented pursuant to Section 4.4.5 of the Settlement Agreement, the "Final Opt-Outs Report" shall be the Opt-Outs Report filed with the Court pursuant to Section 4.4.5 of the Settlement Agreement and the first sentence of this paragraph of this Order. In the event that a Party presents a dispute to the Court pursuant

to Section 4.4.5 of the Settlement Agreement and the second sentence of this paragraph of this Order, the “Final Opt-Outs Report” shall be the Opt-Outs Report filed with the Court pursuant to Section 4.4.5 of the Settlement Agreement, as modified (if at all) by the Court’s ruling on such dispute.

12. **Objections and Appearances.** Any Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Payments Request, or the Fee Request (an “Objection”).

No Objection of any Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member in support of an Objection shall be received and considered by the Court, unless no later than ninety (90) days after the date this Preliminary Approval Order is entered, the Settlement Class Member files with the Clerk of the Court and serves on Settlement Class Counsel and Target’s Counsel written notice of the Objection at the addresses listed in the Notice attached to the Settlement Agreement as Exhibit 3.

Written notice of an Objection must include:

- a. the name of the proceeding;
- b. the full name, address, and telephone number of the financial institution objecting;
- c. a written statement of the Objection, as well as the specific reason(s), if any, for the Objection, including any legal or factual support the Settlement Class Member wishes to bring to the Court’s attention;
- d. any evidence or other information the Settlement Class Member wishes to introduce in support of the Objection;

- e. a statement of whether the Settlement Class Member or its counsel intends to appear and argue at the Final Approval Hearing; and
- f. evidence or other information showing that the Settlement Class Member is a member of the Settlement Class.

Any Settlement Class Member who retains an attorney to prepare the required written notice of an Objection and/or who intends to appear at the Final Approval Hearing through counsel must, in addition to the information stated above, include in the written notice of such Objection:

- a. the attorney's experience with class actions, including the capacity in which the attorney participated in each class action (e.g. plaintiffs', defendants' or objectors' counsel), and the outcome of each case; and
- b. each case in which the attorney has previously represented an objector in a class action, the disposition or effect that any objection had on each class action case, and whether the attorney was paid for each case that was voluntary dismissed, at any time, including on appeal.

Regardless of whether the Settlement Class Member employs an attorney to prepare the required written notice of such Settlement Class Member's Objection, the Settlement Class Member must sign the written notice of such Objection as an attestation that the Settlement Class Member has fully reviewed such written notice of Objection.

Any Settlement Class Member filing written notice of an Objection may be required to sit for a deposition regarding matters concerning the Objection. Any Settlement Class Member that fails to comply with the provisions in Section 12 of this Order shall waive and forfeit any and all rights they may have to make an Objection.

Any Settlement Class Member that files and serves written notice of an Objection, as described above may appear at the Final Approval Hearing, either through an

authorized representative or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Fee Request, or the Service Payments Request on the grounds set forth in such written notice. Settlement Class Members must serve a notice of intention to appear on Financial Institutions Plaintiffs' Lead Counsel and on Target's Counsel, and file said notice with the Court, at the addresses provided above no later than ninety (90) days after entry of the Preliminary Approval Order.

If the Final Judgment is entered, any Settlement Class Member that fails to make an Objection in the manner prescribed herein shall be deemed to have waived its Objections and shall be forever barred from making any such Objections in the Actions or related to the Financial Institutions Complaint or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify, any approval of the Settlement Agreement, the Fee Request, and the Service Payments Request.

13. **Target's Challenge to the Assessment by MasterCard.** Before the earlier of the (i) the Effective Date, or (ii) the termination of the Agreement, Target will not initiate any litigation or other actions to seek reimbursement of funds that Target pays pursuant to MasterCard's final Account Data Compromise Recovery assessment of \$19,107,939.38 relating the Data Breach, dated on or about September 25, 2015 (the "Assessment by MasterCard").

14. **Claims Process and Distribution Plan.** The Settlement Agreement contemplates the establishment of a Settlement Fund and a claims process. Within five (5) business days of the later of (i) the Court's Preliminary Approval Order and (ii)

Settlement Class Counsel's provision to Target of the account information for the Settlement Class Escrow Account, Target shall pay \$500,000 of the Settlement Fund into the Settlement Class Escrow Account to be used in the first instance to pay the costs of notice and administration of the Settlement. If the Effective Date occurs, Target shall pay \$19,750,000 minus any Adjustment pursuant to Section 4.4.6.2 of the Settlement Agreement into the Settlement Class Escrow Account within five (5) business days after the Effective Date.

Settlement Class Representatives and Target have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid claim form. The Court preliminarily approves the Distribution Plan substantially in the form attached to the Settlement Agreement as Exhibit 1 and directs that the Settlement Administrator make the claim forms, or their substantial equivalents, available to Settlement Class Members in the manner specified in the Notice Plan.

The Settlement Administrator will be responsible for effectuating the claims process. Target shall pay administration and class notice costs, including fees and expenses of the Settlement Administrator, up to \$500,000, which shall be paid from Target's initial \$500,000 payment into the Settlement Class Escrow Account. To the extent that the costs of notice and administration of the Settlement exceed \$500,000, such costs shall be paid out of the remainder of the Settlement Class Escrow Account. Settlement Class Members who qualify for and wish to submit a claim form shall do so in accordance with the requirements and procedures specified in the Notices and the claim

forms. If the Final Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notices and the claim forms shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement and the Final Judgment.

15. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of October 22, 2015, including with respect to any discovery pending as of October 22, 2015 or deadlines existing in the Financial Institution Cases as of October 22, 2015, if the Final Judgment is not entered or the Settlement is terminated in accordance with Section 9.1 of the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, except that the provisions set forth in Section 2.1, Section 9.2.1, Section 9.2.2, Section 11, Section 13.2, and Section 14.5 of the Settlement Agreement shall survive, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

16. **Use of Order.** This Order shall be of no force or effect if the Final Judgment is not entered or the Settlement is terminated in accordance with Section 9.1 of the Settlement Agreement and shall not be construed or used as an admission, concession, or declaration by or against Target of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or

against any Settlement Class Representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims he, she, or it may have in this litigation or in any other lawsuit.

17. **Stay of Proceedings and Preliminary Injunction.** All discovery and deadlines set by the Court in the Financial Institution Cases are stayed and suspended effective October 22, 2015, pending the Final Approval Hearing and the Court's decision as to the issuance of the Final Judgment.

Any actions or proceedings pending in any court in the United States filed by Settlement Class Members based on or relating to the Data Breach are stayed pending the Final Approval Hearing and the Court's decision as to the issuance of the Final Judgment.

In addition, pending the Final Approval Hearing and the Court's decision as to issuance of the Final Judgment, all Class Members that have not submitted a valid request to opt out are enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from, any other lawsuit, arbitration, or other proceeding or order in any jurisdiction based on or relating to the Data Breach or the claims and causes of action alleged in any of the Actions or in the Financial Institution Complaint. The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction. The Court further finds that no bond is necessary for issuance of this injunction.

18. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

Dated: December 2, 2015

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge