UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Target Corporation Customer Data Security Breach Litigation This document relates to: All Financial Institution Cases	MDL No. 14-2522 (PAM/JJK)

MEMORANDUM OF LAW IN SUPPORT OF FINANCIAL INSTITUTION PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND NOTICE PLAN

Financial Institution Plaintiffs and the Class they represent have reached a settlement with Target Corporation to resolve claims arising from the data breach Target announced on December 19, 2013. Financial Institutions that have not already released their claims will benefit from the approximately $39 million Settlement Fund. These funds are *in addition* to all amounts being provided by Target through Visa's Global Compromised Account Recovery program. The settlement thus provides significant relief to financial institutions and lies well within the range of reasonableness necessary to establish ultimate approval under Rule 23(e). The Court should, therefore, preliminarily approve the settlement, direct that notice be sent to all Class members in the reasonable manner proposed below, set deadlines for exclusions, objections, and briefing on Plaintiffs' motion for final approval and petition for service awards, attorneys' fees, and costs, and set a date for the final fairness hearing.

FACTUAL AND PROCEDURAL BACKGROUND

On December 1, 2015, Financial Institution Plaintiffs and Counsel for Plaintiffs and the Class—certified on September 15, 2015—entered into a Settlement Agreement

and Release ("Settlement") with Defendant Target Corporation ("Target" or "Defendant"). The Settlement is attached as Exhibit A to the Declaration of Charles S. Zimmerman ("Zimmerman Decl."). Plaintiffs and Target have agreed to resolve all claims asserted in the Financial Institution cases that were consolidated for pretrial purposes in this litigation. Target will provide a Settlement Fund of approximately $39 million to be distributed to Settlement Class Members pursuant to the Distribution Plan (Ex. A-1)[1] and MasterCard's Account Data Compromise ("ADC") recovery program, and to pay for settlement class notice and administration.

A. The Benefits the Settlement Provides

The Settlement defines the Settlement Class as:

> All entities in the United States and its Territories that (i) issued Compromised Payment Cards and (ii) have not previously released Target with respect to all of the Compromised Payment Cards that they issued.

Ex. A ¶ 1.8. Because per-card costs incurred by Financial Institutions may have differed depending on bank asset class, Counsel for Financial Institution Plaintiffs negotiated a protocol by which banks can decide themselves how to be compensated for their losses. This option alone is a significant benefit. Settlement Class members have the option to make a claim to either (1) receive at least $1.50 per compromised payment card over and above any per-card amount they will receive from MasterCard's ADC recovery program or Visa's Global Compromise Account Recovery ("GCAR") program, or (2) receive up to 60% of their total fraud, reissuance and other costs related to the data breach, less any amounts received through network recovery programs, such as ADC and GCAR. Ex. A-1

[1] "Ex. A-__" refers to exhibits to the Settlement Agreement and Release.

¶ 2. The Settlement refers to the $1.50 per-card recovery option as the "Fixed Premium" claim, and refers to the 60%-of-actual-losses option as the "Documentary Support" claim. *Id*.

The Distribution Plan provides for disbursing $20,250,000 paid by Target directly to the Settlement Escrow Account.[2] Ex. A-1. Fixed Premium claims are paid first, and Documentary Support claims are paid out of the remainder. *Id.* ¶¶ 2.1, 2.2. Any residual funds are distributed to Settlement Class members on a pro rata basis. *Id.* ¶ 4.4.1. No part of the Settlement Fund will revert to Target. *See generally id.* ¶ 4.4.

Settlement Class members who submit a Fixed Premium claim need not provide documents showing losses caused by the Breach, but rather need only attest to class membership and eligibility. Ex. A-1 ¶ 2.1 and "Fixed Premium Claim Form." Institutions who submit a Documentary Support claim will attest to class membership and eligibility, and will need to provide documents reflecting Breach-related costs incurred and any money already received from any payment card brand issuer (*e.g.*, Visa GCAR). *Id.* ¶ 2.2 and "Documentary Support Claim Form."

The Settlement also requires Target to forego any further challenge to MasterCard's Assessment of $19,107,939.38. Ex. A ¶¶ 1.6, 5.1. This will directly result in MasterCard distributing that money to issuers that have not yet settled their claims

[2] If entities that represent over 525,000 Eligible Accounts opt out, this number is subject to an incremental downward adjustment that is set by a formula agreed to by the parties. *See* Ex. A ¶ 4.4.6.1. The formula represents a fair adjustment that provides Target with an alternative to terminating the agreement altogether if the 525,000 number happens to be triggered.

with Target. *Id.* at ¶ 5.1.[3] Therefore, as a result of Settlement Class Representatives' efforts, all remaining Financial Institutions that issued alerted-on payment cards will receive their baseline ADC recovery amounts, regardless of whether they make a claim for the additional funds this Settlement provides and regardless of whether they are not released as part of this Settlement.

In addition, Target has agreed to pay all costs associated with providing the best notice practicable under the circumstances and all costs of administering the Distribution Plan as part of the Settlement Fund. Ex. A ¶¶ 1.41, 4.3, 5.3.1. The Settlement also requires Target to pay Settlement Class Representative service awards and attorneys' fees and costs awarded by the Court to Settlement Class Counsel. *Id.* ¶ 7.1. Target's agreement to pay an award of attorneys' fees and expenses approved by the Court is in addition to the Settlement Fund, so any fee award will not decrease Class Members' benefits. *Id*. The Settlement's finality is not dependent on the Court awarding attorneys' fees and expenses to Settlement Class Counsel. *See id.* ¶¶ 7.1, 7.2 (providing that payment of fees is contingent upon order of the Court upon Counsel's separate application). Target reserves its rights to object to Settlement Class Counsel's request for attorneys' fees but waives its right to appeal any award of attorneys' fees that does not exceed $20 million. *Id.* ¶ 7.1. Because the Settlement Class will not be burdened with compensating Settlement Class Counsel, the payment of fees and costs offers an

[3] Counsel is informed by Target that a small percentage (believed to be less than two percent) of the MasterCard accounts that formed the basis for the $19,107,939.38 assessment were issued by foreign issuing banks that are not Class Members. The exact amount that will be paid to such foreign issuing banks out of the assessment, however, is not known by the parties to the lawsuits. Zimmerman Decl. ¶ 4.

additional, significant benefit to the Class, totaling approximately *$59 million in overall monetary class benefits* created by this Settlement alone.

Finally, as a condition of funding Visa's GCAR program and settling with numerous MasterCard-issuing banks on an individual basis, Target required the express release of all claims in *this* litigation. Ex. A at pp. 4-6. Settlement Class Counsel believe that this circumstantial evidence, combined with the fact that such settlements were timed for mandatory participation immediately prior to the Court's consideration of Plaintiffs' class certification motion, demonstrates the impact this case had on creating an even larger fund for all Financial Institutions that issued alerted-on cards. This evidence indicates that the litigation contributed to the achievement of not only this Class Settlement, but also to the network settlements, which have a combined value of over $100,000,000. Ex. A at p. 5.

B. The Notice and Administration Plans

Settlement Class Counsel has selected Dahl Administration LLC to be the Settlement Administrator, who will provide the Class with notice and administer the claims. Zimmerman Decl. ¶ 5. Dahl Administration will provide a long-form notice by U.S. mail to Class Members. *Id.*; *see also* Ex. A-3 (depicting long-form notice). Using existing databases, Dahl Administration will have sufficient information to provide targeted, direct mail notice to all banks that received a network alert related to the Target data breach who have also not already released their claims. Zimmerman Decl. ¶ 5. Recipients of the mailed long-form notice will also receive two claim forms, which are attached to the long-form notice (Ex. A-3-A and A-3-B), and one exclusion form (Ex. A-

5). Dahl Decl. ¶¶ 8, 13. The notice clearly and concisely informs Class members that they may do nothing and be bound by the Settlement, exclude themselves by completing the exclusion form and not be bound by the Settlement, or make a Fixed Premium claim or Documentary Support claim by completing and returning one of the claim forms and be bound by the Settlement. Zimmerman Decl. ¶ 5; Dahl Decl. ¶ 12; *see generally* Ex. A-3.

Dahl Administration will also disseminate short-form notice (Ex. A-4) and web banners through the highly targeted use of multiple notice channels, including "email, print publication, web banners, email newsletters, social media, and earned media—in order reach senior executives of organizations that meet the definition of the Settlement Class." Dahl Decl. ¶ 9. Both forms of notice will direct Class members to a dedicated website to be established by Dahl Administration, where the notices, forms, and a copy of the Settlement agreement will be available, and a 24-hour toll-free helpline to answer questions about the Settlement. *Id.* at ¶¶ 8(h), 20-23; *see also* Ex. A-3 at Q.7 and page footers.

Finally, Dahl Administration will be responsible for accounting for all the claims made and exclusions requested, determining eligibility, and for disbursing funds from the Settlement Escrow Account directly to Settlement Class members. Ex. A ¶¶ 4.4, 5.3. Dahl Administration must also report to the Court that it satisfied its notice obligation. *Id.* at ¶ 8.1.

C. The Stage of Proceedings and Outstanding Claims

The litigation is ripe for this well-informed, global resolution. Zimmerman Decl. ¶ 6. Fewer than two years ago, Target Corporation announced the Breach, resulting in

alerts to Financial Institutions that particular payment card accounts had been placed at risk. *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-md-2522 (PAM/JJK), 2015 WL 5432115, *1 and *3 (D. Minn. Sept. 15, 2015). Five Financial Institutions stepped forward to seek compensation on behalf of thousands of similarly situated entities nationwide. ECF No. 163, Consol. Compl. ¶¶ 7-12. Their allegations that Target negligently failed to protect Financial Institutions' data and that Target violated the Minnesota Plastic Card Security Act were sustained by the Court in its December 2, 2014 order. *See generally In re Target Corp. Customer Data Security Breach Litig.*, 64 F. Supp. 3d 1304 (D. Minn. 2014). Plaintiffs received and produced voluminous discovery materials and conducted depositions of Target employees. Zimmerman Decl. ¶ 6. Millions of pages of documents were reviewed by the parties and 49 witnesses were deposed. *Id*. Throughout the discovery period, in addition to consulting with named Plaintiffs in this case, Settlement Class Counsel kept in close contact with many absent, putative class members, including large institutions whom Counsel kept aware of developments in the litigation through mailings, dedicated website updates, newsletters, and personal phone calls. *Id.* ¶ 8.

In their motion for class certification, through documents, depositions, and expert testimony, Financial Institution Plaintiffs had supplied the Court with common evidence showing that all Financial Institutions had experienced an injury in fact, and that the aggregate amounts attributable to fraud losses and card reissuance could be established on a class-wide basis. *See generally* ECF Nos. 464 and 573 and supporting declarations. The Court certified a class of Financial Institutions under Federal Rule of Civil Procedure

23(b)(3) for damages. *In re Target*, 2015 WL 5432115 at *7. The Court also rejected Target's motions to exclude Plaintiffs' experts. *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-md-2522 (PAM/JJK), 2015 WL 5228637 (D. Minn. Sept. 8, 2015).

Concurrently with pre-certification discovery, Target had entered negotiations with MasterCard and Visa in an attempt to settle and release as many of Class members' claims as possible. Zimmerman Decl. ¶ 10. Shortly after Plaintiffs moved for class certification, Target announced a large settlement with Visa, which set the deadline for participation by Financial Institutions on the eve of the hearing on Plaintiffs' class certification motion. *Id.* ¶ 11. Plaintiffs learned that 100% of Visa issuers would receive their GCAR reimbursements and 74% of those issuers would receive additional payments in exchange for full releases. *Id*. Plaintiffs also learned that a significant percentage of MasterCard issuers had settled individually with Target and released their claims. *Id.* ¶ 12.

D. Settlement Negotiations

Within weeks of the class certification order, the parties agreed to mediate under the guidance of the Honorable U.S. Magistrate Judge Arthur J. Boylan (Ret.), who facilitated rigorous negotiations over the course of 4 in-person mediation sessions. *Id.* ¶ 13. The mediation was highly contested, with counsel for each side advancing their respective arguments zealously on behalf of the best interests of their clients while demonstrating their willingness to continue to litigate rather than accept a settlement not in the best interests of their clients. *Id*. The negotiations were hard-fought throughout and

the settlement process was conducted at arm's length and, while conducted in a highly professional and respectful manner, was quite adversarial. *Id.* Given their intimate knowledge of the nearly full record (the deadline for discovery has now passed), the data and expert opnions related to damages, the evidence and expert consultation regarding liability, and the number of accounts already settled, the parties were in a prime position to agree on the resolution of class claims. *Id*. ¶ 14. The provisions of the Settlement relating to Target's commitment to pay any attorneys' fees and costs approved by the Court were negotiated only after substantive terms of the Settlement were discussed and agreed upon in writing by the parties. *Id*.

DISCUSSION

THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR PRELIMINARY APPROVAL.

Parties settling a class action must seek approval of the settlement from the court. Fed. R. Civ. P. 23(e). Rule 23(e) contemplates a sequential process for courts evaluating class action settlements. First, the Court must determine whether a class should be certified for settlement purposes. *Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (en banc). Second, the Court must consider whether to approve a settlement preliminarily and order that notice be provided to the class. At this preliminary approval stage, the Court determines whether the settlement is within the range of possible approval and whether class members should be notified of the terms of the proposed settlement. *White v. Nat'l Football League*, 822 F. Supp. 1389, 1399 (D. Minn. 1993). Third, after the class has been notified and has had the opportunity to consider the

settlement, the Court must decide whether to grant final approval of the settlement as "fair, reasonable and adequate." Fed. R. Civ. P. 23(e); *see also, e.g.*, *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975). This Court has broad discretion in evaluating a class action settlement. *Van Horn v. Trickey*, 840 F.2d 604, 606-07 (8th Cir. 1988). The law strongly favors resolving litigation through settlement, particularly in the class action context. *White*, 822 F. Supp. at 1416 ("The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context.") (citation omitted); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL- 1958 ADM/AJB, 2012 WL 5055810, *6 (D. Minn. Oct. 18, 2012).

A. The Settlement Class Satisfies the Requirements for Class Certification at the Settlement Stage.

Plaintiffs have the burden of demonstrating satisfaction with all of the applicable requirements of Rule 23. *In re Monosodium Glutamate Antitrust Litig.*, 205 F.R.D. 229, 231 (D. Minn. 2001) (citing *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982)); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551-52 (2011). When "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems … for the proposal is there be no trial," but must still ensure satisfaction with other Rule 23 requirements. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The Settlement Class satisfies each of the requirements of Rule 23(a) (numerosity, commonality, typicality and adequacy of representation) and of Rule 23(b)(3) (predominance and superiority).

In the present case, the Settlement Class definition does not materially differ from the Class this Court certified on September 15, 2015. Therefore, Plaintiffs respectfully request that, based on facts, points, and authorities relied upon by the Court in its opinion and in the Plaintiffs' class certification briefing, the Court certify the Settlement Class for purposes of settlement.

B. The Proposed Settlement Is the Result of Arm's-Length Negotiations among Experienced Counsel.

Courts attach "[a]n initial presumption of fairness . . . to a class settlement reached in arm's-length negotiations between experienced and capable counsel after meaningful discovery." *Grier v. Chase Manhattan Auto Fin. Co.*, No. Civ. A.99-180, 2000 WL 175126, at *5 (E.D. Pa. Feb. 16, 2000); *see also Grunin*, 513 F.2d at 123; *White v. Nat'l Football League*, 836 F. Supp. 1458, 1476-77 (D. Minn. 1993). "The court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *In re Employee Benefit Plans Sec. Litig.*, Civ. No. 3-92-708, 1993 WL 330595, *5 (D. Minn. June 2, 1993) (citation omitted); *see also Welsch v. Gardenbring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987) (affording "great weight" to opinions of experienced counsel).

Indeed, courts consistently find that the terms of a settlement are appropriate where the parties, represented by experienced counsel, have engaged in extensive negotiation at an appropriate stage in the litigation and can properly evaluate the strengths and weaknesses of the case and the propriety of the settlement. *See, e.g.*, *In re Employee Benefit Plans Sec. Litig.*, 1993 WL 330595, at *5 (noting that "intensive and

contentious negotiations likely result in meritorious settlements . . . ."); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL- 1958 ADM/AJB, 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013) (observing that "[s]ettlement agreements are presumptively valid, particularly where a 'settlement has been negotiated at arm's length, discovery is sufficient, [and] the settlement proponents are experienced in similar matters . . . .'") (citation omitted).

Here, Financial Institution Plaintiffs and Target have had ample opportunity to test and refine their legal theories through investigation, research, discovery and contested motion practice, to assess the merits of Plaintiffs' claims and Target's defenses, and to balance the potential value of Settlement Class members' claims against prior settlements and the substantial risks and expense of trial.

The settlement negotiations were conducted under the supervision of Judge Boylan, who facilitated arms-length negotiations over the course of 4 in-person mediation sessions. Zimmerman Decl. ¶ 13. After rigorous discovery and consultation with liability and damages experts, Financial Institution Plaintiffs' Lead Counsel and Class Counsel were confident that the evidence would establish Defendant's liability and prove damages on a class-wide basis. *Id*. ¶ 7. Financial Institution Plaintiffs still faced significant risks and challenges in continued litigation, including the fact that many class members had released their claims with Target. *Id*. ¶ 10-12. Financial Institution Plaintiffs' Lead Counsel recommends, for the Court's consideration, preliminary approval of the Settlement because it is well within the range of possible approval and is fair, reasonable and adequate and in the best interests of the Settlement Class. *Id.* ¶ 16.

When, as here, the parties are represented by experienced counsel and rigorous negotiations were conducted at arms'-length, the judgment of the litigants and their counsel concerning the adequacy of the Settlement may and should be considered. *See Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1149 (8th Cir. 1999); *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995). The extent of the negotiations conducted by Lead Counsel and Target's Counsel, Lead Counsel's experience litigating complex class actions, the arms'-length nature of the settlement negotiations, and the fact that the negotiations were overseen by Judge Boylan, all weigh in favor of preliminary approval of the Settlement.

C. The Proposed Settlement Satisfies the Standard for Preliminary Approval.

At the preliminary approval stage, "the fair, reasonable and adequate standard is lowered, with emphasis only on whether the settlement is within the *range* of possible approval due to an absence of any glaring substantive or procedural deficiencies." *Martin v. Cargill, Inc.* 295 F.R.D. 380, 383 (D. Minn. 2013) (citation omitted). Courts consider four factors in determining whether a proposed settlement is fair, reasonable and adequate for purposes of final *approval*: (1) the merits of plaintiffs' case weighed against the settlement terms; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932-33 (8th Cir. 2005) (citing *Grunin*, 513 F.2d at 124); *Van Horn*, 840 F.2d at 607; *Dryer v. Nat'l Football League*, Civ. No. 09-2182 (PAM/AJB), 2013 WL 5888231, at *2 (D. Minn. 2013). Thus,

at this stage, the Court's task is to determine whether the settlement is in the range of possibly meeting these factors.

In the present case, the Settlement reflects both the strengths and weaknesses of the parties' claims and defenses. The fact that Settlement Class members will receive cash relief across broad categories of damages reflects the strength of Plaintiffs' liability case. The amount offered through the settlement reflects the fact that significant numbers of Visa and MasterCard issuers settled their claims individually with Target. Still, the Settlement provides significant benefits to the Settlement Class. The $39,357,939.38 Settlement Fund will be distributed pursuant to a fair Distribution Plan attached to the Settlement and discussed above. The distribution process will use simple claim forms and a submission process that is administered by an experienced Settlement Administrator, Dahl Administration LLC. No portion of the $39,357,939.38 million Settlement Fund will revert to Target. Furthermore, no Class Member's benefits will be reduced by any service awards or attorneys' fees or expenses awarded by the Court (which Target has promised to pay separately, up to $20,000,000). *See In re Zurn Pex*, 2012 WL 5055810 at *5 (Judge Montgomery's preliminarily approval of a settlement in which the defendants agreed to pay for costs of claims administrator, an engineering consultant, the costs of class notice and up to $8.5 million in attorneys' fees, in addition to paying up to $20 million for class members' claims, "making the total value of this settlement approximately $30 million").

There is no concern that Target will be unable to pay the full amount of the Settlement Fund, together with notice and administrative costs and any attorneys' fees

and expenses awarded by the Court. In addition, the complexity and expense of further litigation loom quite large in this case. Unlike class cases in which damages information is easily gleaned from a single source (usually the defendant), much of the damages data here is in the possession of third parties, making it more difficult to acquire and making the experts' modeling more complex and laborious, and thus very expensive. Zimmerman Decl. ¶ 9. While Plaintiffs are very confident in their damages estimates, preparing them for a contested trial would involve considerable expense. *Id.* Similarly, the trial presentation establishing liability would also be heavily expert-driven. *Id.* For these reasons, Financial Institution Plaintiffs urge the Court to find that the proposed Settlement is within the range of reasonableness warranting notice to Class Members and should be preliminarily approved.

D. The Proposed Form and Manner of Notice Are Appropriate.

Under Rule 23(e), Class Members are entitled to reasonable notice of the proposed Settlement. *See* Manual for Complex Litig. §§ 21.312, 21.631 (4th ed. 2011). Settlement notice must be "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Petrovic*, 200 F.3d at 1153 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Notice need only satisfy the "'broad "reasonableness" standards imposed by due process.'" *Id.* (quoting *Grunin*, 513 F.2d at 121). Notice need not provide "a complete source of information" or an exact amount of recovery for each class member. *Id.* (citing *DeBoer*, 64 F.3d at 1176). Best notice practicable means "individual notice to all members who can be identified through

reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Notice that is mailed to each member of a settlement class "who can be identified through reasonable effort" constitutes reasonable notice. *Eisen*, 417 U.S. at 176.

Counsel for the Settlement Class have hired a highly experienced and well regarded class action notice and administration firm, Dahl Administration LLC. Zimmerman Decl., ¶ 5. Jeffrey Dahl, Founder and Principal of Dahl Administration LLC, has over 22 years of experience in class action settlement administration. Dahl Decl. ¶ 2. In his opinion, the Notice Plan detailed in section B of the Factual and Procedural Background above, "by using multiple notice tactics highly targeted at the relevant target audience—including mail, email, web banners, print and email publication, social media notice, and earned media—provides the best notice practicable under the circumstances to the members of the Settlement Class." Dahl Decl. ¶ 26. It is "fully compliant with Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure and meets the notice guidelines established by the Federal Judicial Center's Manual for Complex Litigation, 4th Edition (2004), as well the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010), and is consistent with notice programs approved previously by both State and Federal Courts." *Id.* ¶ 27.The notice plan provided by the Settlement Administrator here exceeds the standards approved by Courts time and again.

Financial Institution Plaintiffs respectfully submit that the multifaceted, comprehensive notice plan developed by the Settlement Administrator provides the best notice practicable under the facts and circumstances of this case and fully satisfies due

process requirements. Class Counsel requests that the Court approve the proposed form and manner of notice to the Settlement Class as set forth in the Notice Plan.

E. The Request for Service Awards for the Proposed Class Representatives Is Fair and Reasonable.

Financial Institution Plaintiffs' Counsel respectfully request that the Court approve a statement—to be included in the Long Form Notice to the Settlement Class—that Class Counsel will request the payment of service awards to the Settlement Class Representatives in recognition of their services as Class Representatives in this litigation. Ex. A-3 at Q.17. Settlement Class Counsel will request up to a $20,000 service award to each Settlement Class Representative, Plaintiffs Umpqua Bank, Mutual Bank, Village Bank, CSE Federal Credit Union, and First Federal Savings of Lorain, whose service to the Class included conducting an investigation of bank records, consulting extensively with counsel, and providing deposition testimony and over one million electronic files to counsel for review. Zimmerman Decl. ¶ 15.

Courts recognize the purpose and appropriateness of service awards to class representatives. *See, e.g.*, *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08- MDL-1958 ADM/AJB, 2013 WL 716460, *2 (D. Minn. Feb. 27, 2013) (approving $5,000 service award to each of nine class representatives and $7,500 to seven individual consumer class representatives who were deposed, noting that the service payments "reflect the efforts by the class representatives to gather and communicate information to counsel and act as the public face of the litigation" and explaining that each class representative "assisted with the investigation and preparation of these suits, gathered

documents for production and helped class counsel" and "[s]ome of the class representatives gave depositions"); *White*, 822 F.2d at 1406 (noting that "[c]ourts . . . routinely approve such awards for class representatives who expend special efforts that redound to the benefit of absent class members," and citing cases).

Each of the proposed Settlement Class Representatives could have simply awaited the outcome of this litigation and may have received the same benefits as any other Settlement Class Member. However, if no one had done so, there would be no benefits whatsoever. Instead, they stepped up to lead this litigation and represent the interests of all Class members. They remained committed to and actively participated in this hard-fought litigation against a formidable defendant on behalf of a very large group of class members. Service payments for the proposed Settlement Class Representatives are appropriate.

CONCLUSION

For these reasons, Financial Institution Plaintiffs' Counsel respectfully ask the Court to enter an Order: (1) certifying the Settlement Class for purposes of settlement; (2) appointing Financial Institution Plaintiffs as representatives of the Settlement Class; (3) appointing Financial Institution Plaintiffs' Co-Lead Counsel and the undersigned counsel as Settlement Class Counsel; (4) granting preliminary approval of the proposed Settlement; (5) approving the proposed form and manner of notice to the Settlement Class; (6) directing that the notice to the Settlement Class be disseminated by Settlement Administrator, Dahl Administration LLC, in the manner described in the Settlement and in the Declaration of Jeffrey D. Dahl; (7) establishing a deadline for Settlement Class

members to request exclusion from the Settlement Class or file objections to the Settlement; and (8) setting the proposed schedule for completion of further settlement proceedings, including scheduling the final fairness hearing.

Dated: December 2, 2015

Respectfully submitted,

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