

**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 Consumer  
Cases.

**SETTLEMENT AGREEMENT AND RELEASE**

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## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is made as of March 9, 2015, by and among the following parties, as hereinafter defined: (a) Settlement Class Representatives, on behalf of themselves and the putative class members in the Consumer Actions, by and through Settlement Class Counsel; and (b) Target Corporation (“Target”), by and through its undersigned counsel (“Target’s Counsel”). Settlement Class Representatives and Target are the “Parties” or a “Party.”

### **RECITALS**

WHEREAS, on December 19, 2013, Target announced that it had been the victim of a criminal attack on its computer network by third-party intruders who stole credit and debit card information and contact information of Target guests (the “Intrusion”);

WHEREAS, the Settlement Class Representatives are plaintiffs in the Consumer Actions filed against Target alleging common law claims and violations of state laws based on Target’s allegedly inadequate data security and Target’s alleged delay in notifying them of the Intrusion;

WHEREAS, on April 2, 2014, the Judicial Panel on Multidistrict Litigation (“MDL Panel”) granted a motion for consolidation for coordinated pretrial proceedings and subsequently transferred the cases identified in the motion, as well as all tag-along cases, to the United States District Court for the District of Minnesota;

WHEREAS, all of the Consumer Actions filed against Target have been consolidated in accordance with the MDL Panel's transfer orders and currently are a part of the MDL proceedings pending in the Court;

WHEREAS, the named plaintiffs in the Consumer Actions filed Consumer Plaintiffs' First Amended Consolidated Class Action Complaint ("Consumer Complaint"), Target moved to dismiss the Consumer Complaint, and the Court granted the motion in part and denied the motion in part by Order dated December 19, 2014;

WHEREAS, Target denies: (a) the allegations and all liability with respect to any and all facts and claims alleged in the Consumer Actions; (b) that the Settlement Class Representatives in the Consumer Actions and the class they purport to represent have suffered any damage; and (c) that the Consumer Actions satisfy the requirements to be tried as a class action under Federal Rule of Civil Procedure 23;

WHEREAS, the Settlement Class Representatives and Settlement Class Counsel in the Consumer Actions have concluded, despite their belief in the merits of their claims, that the Settlement Class has been injured and suffered damages and that the Consumer Actions satisfy the requirements to be tried as a class action under Federal Rule of Civil Procedure 23, after discovery and investigation of the facts and after carefully considering the circumstances of the Consumer Actions, including the possible legal and factual defenses thereto, that it would be in the best interests of the Settlement Class (as hereinafter defined) to enter into this Agreement, which interests include the substantial value to be derived by this settlement and the interest in avoiding the uncertainties of

litigation and assuring that the benefits reflected herein are obtained for the Settlement Class;

WHEREAS, Target, despite its belief that it has valid and complete defenses to the claims asserted against it, has nevertheless agreed to enter into this Agreement to reduce and avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation and thereby to resolve any controversy;

WHEREAS, the Parties believe that this Agreement is fair, reasonable, and adequate because, among other things: (a) it provides for certification of a Settlement Class, even though the Court has not yet determined whether the Consumer Actions could properly be brought as a class action, and Target maintains that class certification for trial purposes would not be proper under Federal Rule of Civil Procedure 23; and (b) it provides for significant benefits for Settlement Class Members; and

WHEREAS, the settlement set forth in this Agreement is a product of sustained, arm's length negotiations conducted in numerous mediation sessions before The Honorable Arthur J. Boylan, former Chief Magistrate Judge for the United States District Court for the District of Minnesota;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and without: (a) any admission or concession on the part of Settlement Class Representatives or Settlement Class Counsel of the lack of merit of the Consumer Actions; or (b) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by Target,

IT IS HEREBY STIPULATED AND AGREED by the Parties, that the Consumer Actions, and the claims set forth in sections 6.1, 6.2, and 6.3, be settled, compromised, and dismissed on the merits and with prejudice as to Target, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the following terms and conditions:

**1. DEFINITIONS**

As used in this Agreement, the terms set forth in this section in boldface type will have the following meanings:

**1.1 Agreement or Settlement Agreement.** This document, including all exhibits.

**1.2 Class Members or Class.** All persons in the United States whose credit or debit card information and/or whose personal information was compromised as a result of the data breach that was first disclosed by Target on December 19, 2013, excluding the Court and the officers and directors of Target.

**1.3 Consumer Actions.** The actions brought on behalf of consumers against Target relating to the Intrusion that were consolidated for pretrial purposes in the matter entitled *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 14-2522 (PAM/JJK).

**1.4 Court.** The Honorable Paul A. Magnuson, United States District Court Judge, District of Minnesota, or such other judge to whom the Consumer Actions may hereafter be assigned.

**1.5 Distribution Plan.** The plan, substantially in the form of Exhibit 1, for distributing the Settlement Funds to Settlement Class Members who submit valid Proof of Claim forms.

**1.6 Effective Date.** The first date after which the following events and conditions have occurred: (a) the Court has entered a Final Judgment; and (b) the Final Judgment has become final in that the time for appeal or writ has expired or, if any appeal and/or petition for review is taken and the settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the judgment shall not be a Final Judgment.

**1.7 Final Approval Hearing.** The hearing held by the Court to consider evidence and argument for the purpose of determining whether to enter the Final Judgment, and evaluating Settlement Class Counsel's Fee Request and request for an award of service payments to the Settlement Class Representatives.

**1.8 Final Judgment.** The final judgment and order of dismissal with prejudice to be entered by the Court substantially in the form attached as Exhibit 2 hereto.

**1.9 Intrusion.** The data breach first disclosed by Target on December 19, 2013.

**1.10 Notices.** The information, substantially in the form of Exhibits 3-5, to be provided to Class Members pursuant to the Notice Plan.

**1.11 Notice Plan.** The settlement notice program developed by the Settlement Administrator substantially in the form attached as Exhibit 6.



**1.12 Preliminary Approval Order.** The Order of Preliminary Approval of Settlement to be entered by the Court substantially in the form attached as Exhibit 7 hereto.

**1.13 Released Parties.** Target and its present, former, and future parents, subsidiaries, affiliates, divisions, associates, agents, successors, predecessors, assignors, assignees, and/or assigns, and each of their respective present, former or future, officers, directors, shareholders, insurers, agents and employees.

**1.14 Releasing Parties.** The Settlement Class Representatives, all other Settlement Class Members, and their respective heirs, executors, administrators, representatives, agents, partners, successors, and assigns.

**1.15 Service Payment.** One-time payments to the Settlement Class Representatives as set forth in section 7.1.

**1.16 Settlement Administrator.** Subject to Court approval, Rust Consulting, Inc.

**1.17 Settlement Class Counsel.** The Consumer Plaintiffs' Lead Counsel (Vincent Esades, Heins Mills & Olson, PLC); Steering Committee (Ariana Tadler, Milberg LLP, Norman E. Siegel, Stueve Siegel Hanson LLP, Daniel Girard, Girard Gibbs LLP); Consumer Representative on the Executive Committee (John Yanchunis, Morgan & Morgan Complex Litigation Group); and Consumer Plaintiffs' Liaison Counsel (Michelle Drake, Nichols Kaster PLLP).

**1.18 Settlement Class Escrow Account.** The account described in section 5.1.1 of this Agreement.

**1.19 Settlement Class Members or Settlement Class.** All persons who fall within the Settlement Class to be certified pursuant to section 3.1.

**1.20 Settlement Class Representatives.** The named plaintiffs in the Consolidated Class Action Complaint filed in the Consumer Actions listed on attached Exhibit 8.

**1.21 Settlement Payment or Settlement Fund.** \$10 million dollars (\$10,000,000), which is the limit and extent of Target's monetary obligations for the payment of benefits to Settlement Class Members and service payments to the Settlement Class Representatives.

## **2. SETTLEMENT PROCEDURES**

**2.1** As soon as possible after the execution of this Agreement, the Settlement Class Representatives shall move the Court for a Preliminary Approval Order substantially in the form of Exhibit 7. If the Court makes any material modification to the terms of the Preliminary Approval Order, any Party may terminate this Agreement by providing written notice of termination to counsel for all other Parties and to the Court no later than 7 days after entry of the order. In the event any Party exercises its right under this section and terminates this Agreement, all obligations under this Agreement shall cease to be of any force and effect, this Agreement shall be rescinded, cancelled, and annulled, and the Parties shall return to their respective positions in the manner and effect as set forth in section 3.2 of this Agreement.

**2.2** At the time of the submission of this Agreement to the Court as described in the previous section, the Settlement Class Representatives shall request that, after notice is

given to Class Members in accordance with the Notice Plan, the Court hold the Final Approval Hearing and approve the settlement of the Consumer Actions as set forth herein.

**2.3** At least 21 days before the deadline for Settlement Class Members to file objections to the settlement, Settlement Class Counsel shall file with the Court, and serve upon Target: (a) their motion for an award of attorneys' fees and expenses ("Fee Request"); and (b) any applications by Settlement Class Representatives for awards of Service Payments from the Settlement Fund.

**2.4** At the Final Approval Hearing, the Parties will request that the Court enter a Final Judgment substantially in the form of Exhibit 2.

### **3. THE SETTLEMENT CLASS**

**3.1 Settlement Class.** For settlement purposes only, the Parties agree that the Court should certify a Settlement Class in the Consumer Actions pursuant to Fed. R. Civ. P. 23(b)(3), defined as follows:

All persons in the United States whose credit or debit card information and/or whose personal information was compromised as a result of the data breach that was first disclosed by Target on December 19, 2013.

Excluded from the class are the Court, the officers and directors of Target, and persons who timely and validly request exclusion from the Settlement Class.

The Settlement Class Representatives will move for certification of the Settlement Class contemporaneously with their motion for preliminary approval of this settlement. Target agrees not to contest certification of the Settlement Class but reserves the right to contest any motion to certify a class for any purpose other than settlement of the Consumer Actions. Any Class Member who is not excluded from the Settlement Class under

section 4.4.1 shall, on entry of the Final Judgment, become a Settlement Class Member. If the Court certifies any class or enters any orders relating to the Settlement Class Representatives and Settlement Class Counsel, such actions shall not be an adjudication of any fact or issue for any purpose other than the effectuation of this Agreement and shall neither be considered as law of the case or *res judicata* nor have collateral estoppel effect in this or any other proceeding.

**3.2 Decertification of the Settlement Class if Settlement Not Approved.** If the Court does not enter the Final Judgment without material modification, or if the Final Judgment is reversed in whole or in part on appeal, certification of the Settlement Class will be vacated, and the Parties will be returned to their positions *status quo ante* with respect to the Consumer Actions as if the settlement had not been entered into. In the event that Final Judgment is not achieved, (a) any court orders preliminarily or finally approving the certification of any class contemplated by the settlement and any other orders entered pursuant to the Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion; and (b) this Agreement will become null and void, and the fact of this settlement, that Target did not oppose the certification of any class under the settlement, or that the Court approved the certification of a Settlement Class, shall not be used or cited thereafter by any person or entity, including in any contested proceeding relating to the certification of any class.

#### **4. NOTICE, OPT OUTS, AND OBJECTIONS**

**4.1 Manner of Giving Notice to the Class.** Pursuant to the Preliminary Approval Order, the Settlement Administrator will provide notice to Class Members in accordance with the Notice Plan.

**4.2 Other Required Notice.** Target will serve the notice required under 28 U.S.C. § 1715, in the form attached as Exhibit 9.

**4.3 Payment of Expenses Relating to Notice.** Target shall pay all expenses associated with providing notice to Class Members including, but not limited to, the Settlement Administrator's fees. These payments shall be made separate and apart from the Settlement Payment.

#### **4.4 Opt-Outs by Class Members.**

**4.4.1 Procedures for Opt Outs.** The Parties will request that the Court order procedures for Class Members to request to be excluded from the Settlement Class ("opt out") in accordance with the provisions in the Preliminary Approval Order attached as Exhibit 7. Each Class Member who does not submit a valid request to opt out shall remain in the Settlement Class and shall be bound by the settlement and release provided in this Agreement. Within 7 days of the date set forth in the Notices by which opt out requests must be postmarked, the Settlement Administrator shall send copies of all requests to opt out to Settlement Class Counsel and to Target's Counsel.

**4.4.2 Effect of Opt Outs by Class Members.** If more than 5,000 Class Members submit valid requests to opt out of the Settlement Class, Target may terminate this Agreement by providing written notice of termination to Settlement Class Counsel

and to the Court no later than 7 days before the Final Approval Hearing. In the event Target exercises its right under this section and terminates this Agreement, all obligations under this Agreement shall cease to be of any force and effect, this Agreement shall be rescinded, cancelled, and annulled, and the Parties shall return to their respective positions in the manner and effect as set forth in section 3.2 of this Agreement.

#### **4.5 Objections by Settlement Class Members**

**4.5.1 Procedure for Objections.** The Parties will request that the Court order procedures for Settlement Class Members to object to or oppose the approval of the settlement set forth in the Agreement, for an award of Service Payments to Settlement Class Representatives, and/or the Fee Request in accordance with the provisions in the Preliminary Approval Order.

### **5. CONSIDERATION**

#### **5.1 Distribution of Monetary Benefits to Settlement Class Members.**

Settlement Class Members shall be eligible to receive monetary benefits in accordance with the Distribution Plan.

**5.1.1 Settlement Class Escrow Account.** Within 10 business days of the Effective Date, Target shall pay the Settlement Payment into the Settlement Class Escrow Account. The money in the Settlement Class Escrow Account shall be a Court-approved Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. Settlement Class Counsel, on behalf of the Settlement Class, shall be responsible for all administrative, accounting and tax compliance activities in connection with the Settlement Class Escrow Account and the monies deposited into the Settlement Class

Escrow Account, including any filing necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Target shall provide to Settlement Class Counsel any documentation necessary to facilitate obtaining Qualified Settlement Fund status for the Class Escrow Account pursuant to Treas. Reg. § 1.468B-1. All taxes on income or interest generated by the Settlement Class Escrow Account, if any, shall be paid out of the Settlement Class Escrow Account.

**5.1.2 Distributing the Settlement Class Escrow Account.** The Settlement Class Escrow Account shall be used to: (a) pay any taxes due on the account, as set forth in section 5.1.1; (b) pay such Service Payments as the Court may award; and (c) make payments to Settlement Class Members in accordance with the Distribution Plan, and as approved by the Court.

**5.1.3 Distribution of Remaining Funds.** No portion of the Settlement Class Escrow Account will be returned to Target. Any amounts remaining in the Settlement Class Escrow Account after all distributions provided in section 5.1.2 shall be distributed by the Settlement Administrator as directed by the Court.

**5.1.4 Payment of Expenses Relating to Benefit Distribution.** Target shall pay all expenses associated with administration of the Distribution Plan including, but not limited to, the Settlement Administrator's fees. These payments shall be made separate and apart from the Settlement Payment.

**5.1.5 All Claims Satisfied.** Each Settlement Class Member shall look solely to the consideration described in this Agreement for satisfaction of all Released Claims.

**5.1.6** After the Effective Date, Target and its insurers shall have no responsibility, financial obligation, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, or with respect to the administration of the settlement or the Settlement Fund, except for Target's obligation to pay expenses as set forth in section 5.1.4 above.

**5.2 Non-Monetary Relief.** Target agrees to implement the following measures within 10 business days of the Effective Date, and agrees that such measures will be maintained for five years from the Effective Date:

**5.2.1 Chief Information Security Officer.** Target will designate a high level executive to coordinate and be responsible for its information security program entrusted with the protection of consumers' personally identifiable information.

**5.2.2 Maintain a written information security program.** Target will identify internal and external risks to the security of its consumers' personally identifiable information that could result in unauthorized access to the company's system, and periodically review the sufficiency of any safeguards in place to control these risks. Target will develop security metrics that measure its security program and will ensure that such metrics are periodically reviewed and approved by senior leadership.

**5.2.3 Maintain a process to monitor for information security events and to respond to such events determined to present a threat.** Target will design and implement reasonable safeguards to control information security risks, including through reasonable and appropriate software security testing.



**5.2.4 Provide security training to Target employees.** Target will implement a program to educate and train relevant employees of the importance of the security of consumers' personally identifying information.

**6. RELEASE OF CLAIMS**

**6.1 Release of Settlement Class Claims.** As of the Effective Date, each Releasing Party will be deemed to have completely released and forever discharged the Released Parties, and each of them, from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees (except as otherwise provided herein), losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, that were alleged or asserted against any of the Released Parties in the Consumer Actions or that could have been alleged or asserted against any of the Released Parties arising out of the same nucleus of operative facts as any of the claims alleged or asserted in the Consumer Actions ("Released Claims"), including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged in the Consumer Actions or in any pleading or other paper filed with any court in the underlying Consumer Actions, and the disclosures and/or notices that Target made or failed to make to the Settlement Class Representatives or the other Settlement Class Members about the Intrusion.

**6.2 Release of Claims of Settlement Class Representatives, other Settlement Class Members, and Settlement Class Counsel.** As of the Effective Date, the Released Parties will be deemed to have completely released and forever discharged the Settlement Class Representatives, the other members of the Settlement Class, and Settlement Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Consumer Actions.

**6.3 Unknown Claims.** For purposes of the releases set forth in sections 6.1 and 6.2 and the Final Judgment, "unknown claims" means claims that the Releasing Parties do not know or suspect to exist in their favor at the time of their granting a release, which if known by them might have affected their settlement of the Consumer Actions. It is the intention of the Parties and the Settlement Class Members that, upon the Effective Date, each of the Releasing Parties shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, federal law, or principle of common law which is similar, comparable, or equivalent to section 1542 of the California Civil Code, the provisions, rights and benefits of any statute or law which might otherwise render a general release

unenforceable with respect to unknown claims. Section 1542 of the California Civil Code reads:

Section 1542. General Release, extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each of the Releasing Parties shall be deemed to have acknowledged, and by operation of the Final Judgment acknowledges, that he/she/it is aware that he/she/it may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, but it is his/her/its intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

**6.4 Bar to Future Suits.** Upon entry of the Final Judgment, the Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Judgment. It is further agreed that the settlement may be pleaded as a complete defense to any proceeding subject to this section.

**7. SERVICE PAYMENTS, ATTORNEYS' FEES AND LITIGATION EXPENSES AND REIMBURSEMENTS**

**7.1 Service Payments.** The Settlement Class Representatives may apply to the Court for an award of Service Payments. Any Service Payments awarded will be paid from the Settlement Fund.

**7.2 Attorneys' Fees.** Target will pay any attorneys' fees and expenses awarded by the Court to Settlement Class Counsel separate and apart from the Settlement Fund. Settlement Class Counsel's Fee Request will not exceed \$6.75 million (\$6,750,000). The finality or effectiveness of the settlement will not be dependent on the Court awarding Settlement Class Counsel any particular amount on their Fee Request. Target reserves the right to object to the Fee Request; provided, however, that Target waives its right to appeal if the amount awarded by the Court on the Fee Request does not exceed \$6.75 million (\$6,750,000).

**7.3 Payment Procedure.** Target will pay any attorneys' fees and expenses awarded by the Court to Settlement Class Counsel within 15 business days of the later of: (a) the Effective Date; or (b) receipt by Target of the Settlement Class Counsel's completed W-9 forms.

**7.4 No Additional Amounts Due.** Target shall not be liable for any additional attorneys' fees and expenses of Settlement Class Counsel or the Settlement Class Representatives in the Consumer Actions.

**8. SETTLEMENT ADMINISTRATOR'S REPORTING OBLIGATIONS**

**8.1 Declaration In Support of Final Approval.** No later than 14 days before the Final Approval Hearing date, the Settlement Administrator will file with the Court a sworn declaration verifying that notice was provided to Class Members as required in the Preliminary Approval Order and including a list of the Class Members who validly opted out of the Settlement Class as set forth in section 4.4.1 above.

**9. CONTINGENCIES; TERMINATION**

**9.1 Contingencies.** This Agreement shall be deemed terminated and cancelled, and shall have no further force and effect whatsoever, if: (a) there is no Effective Date; (b) the Court fails to enter a Preliminary Approval Order substantially in the form attached as Exhibit 7; (c) the Court fails to enter Final Judgment substantially in the form attached as Exhibit 2; or (d) Target elects to terminate pursuant to section 4.4.2 above.

**9.2 Effect of Termination.** In the event that this Agreement is voided, terminated or cancelled, or fails to become effective for any reason whatsoever, then the Parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and they shall proceed in all respects as if this Agreement, its exhibits, and any related agreements or orders, had never been executed or entered.

**10. CONTINUING JURISDICTION**

**10.1 Continuing Jurisdiction.** The Court shall retain jurisdiction to enforce this Agreement's terms and the Final Judgment.

## **11. PUBLICITY**

In issuing public statements, including responding to any inquiries from the public media concerning the Consumer Actions and/or the settlement of the Consumer Actions, the Settlement Class Representatives, Settlement Class Counsel, Target, and Target's Counsel will limit their statements to promoting the virtues of the settlement or other statements that comport with all the pleadings, the Notices, the Agreement, and the court orders in the Consumer Actions. Settlement Class Representatives and Settlement Class Counsel shall not engage in any conduct or make any statement, directly or indirectly, that the settlement of claims contemplated by this Agreement constitutes an admission of liability or an admission of the validity or accuracy of any of the allegations in the Consumer Actions by Target. However, nothing shall limit (a) the ability of Settlement Class Counsel to communicate privately with a Settlement Class Member concerning the settlement; and (b) the ability of Target or its successors to make such public disclosures as the federal securities laws require or to provide information about the settlement to state and federal regulators, other government officials, or its insurers/reinsurers.

## 12. NOTICES

Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email and overnight mail as follows:

**To Plaintiffs:**

Vincent J. Esades  
HEINS MILLS & OLSON PLC  
310 Clifton Avenue  
Minneapolis, Minnesota 55403

**To Target:**

David F. McDowell  
MORRISON & FOERSTER LLP  
707 Wilshire Boulevard  
Los Angeles, California 90017-3543

Carter Leuty  
TARGET CORPORATION  
TPS-3155  
1000 Nicollet Mall  
Minneapolis, MN 55403

## 13. MISCELLANEOUS

**13.1 Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement.

**13.2 No Liability.** This Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Parties have entered into the Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Agreement may not be used by any third party against any Party. Pursuant to Federal Rule of Evidence 408, the entering into and carrying out of the Agreement, and any negotiations or proceedings related to it, shall not be construed as, or

deemed evidence of, an admission or concession by any of the Parties or a waiver of any applicable statute of limitations, and shall not be offered or received into evidence in any action or proceeding against any Party in any court, administrative agency or other tribunal for any purpose whatsoever.

**13.3 Amendment.** This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

#### **14. REPRESENTATIONS AND WARRANTIES**

**14.1 No Additional Persons with Financial Interest.** Target shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Agreement. Settlement Class Counsel agree to hold Target harmless from any claim that the term "Settlement Class Counsel" as defined in section 1.17 of this Agreement fails to include any person or firm who claims that they are entitled to a share of any attorneys' fees awarded to Settlement Class Counsel in this lawsuit.

**14.2 Parties Authorized to Enter into Agreement.** Each person executing this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of Settlement Class Representatives or Target covenants, warrants and represents that he or she is and has been fully authorized to do so by the Settlement Class Representatives or Target. Each Settlement Class Representative and



Target hereto further represents and warrants that they intend to be bound fully by the terms of this Agreement.

**14.3 Best Efforts.** The Settlement Class Representatives and Target agree that the terms of the Agreement reflect a good-faith settlement of disputed claims. They consider the settlement effected by this Agreement to be fair and reasonable and will use their best efforts to seek preliminary approval, and if granted, final approval of the Agreement by the Court, including in responding to any objectors, intervenors or other persons or entities seeking to preclude entry of the Final Judgment and, if the settlement is granted final approval, to effectuate the settlement's terms. They each represent and warrant that they have not made, nor will they (a) attempt to void this Agreement in any way, or (b) solicit, encourage, or assist in any fashion any effort by any person (natural or legal) to object to the settlement under this Agreement.

**14.4 Time Periods.** The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Settlement Class Counsel and Target's Counsel.

**14.5 Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of Minnesota without regard to its choice of law principles.

**14.6 No Construction Against Drafter.** This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

**14.7 Agreement Binding on Successors in Interest.** This Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

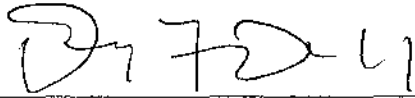
**14.8 Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the Parties' attorneys. The signatories may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all signatories had signed the same instrument.

**14.9 Signatures.** Each person executing this Agreement warrants that such person has the full authority to do so. Signatures sent in pdf format by email will constitute sufficient execution of this Agreement.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed

by their duly authorized attorneys.

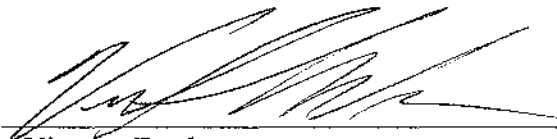
***Counsel for Target***



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David F. McDowell  
Morrison & Foerster LLP  
707 Wilshire Boulevard  
Los Angeles, California 90017-3543

***Settlement Class Counsel***



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Vincent Esades  
Heins Mills & Olson, PLC  
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Minneapolis, Minnesota 55403

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Minneapolis, Minnesota 55402

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Ariana Tadler  
Milberg LLP  
One Pennsylvania Plaza  
49<sup>th</sup> Floor  
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IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed  
by their duly authorized attorneys.

*Counsel for Target*

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David F. McDowell  
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707 Wilshire Boulevard  
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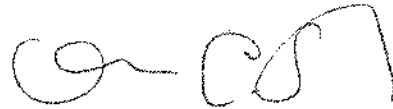
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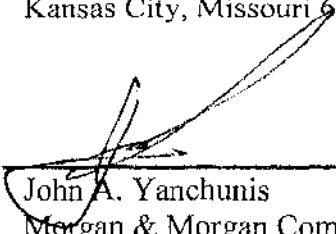
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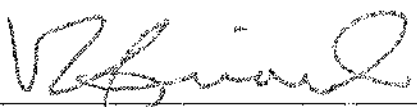
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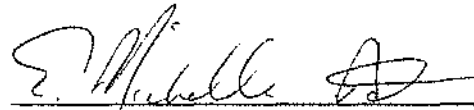
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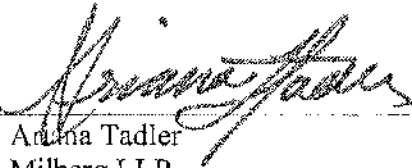
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