

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE: THE HOME DEPOT, INC. )	
CUSTOMER DATA SECURITY )	Case No. 1:14-md-02583-TWT
BREACH LITIGATION )	
_____ )	<b>CONSUMER CASES</b>

**CONSUMER PLAINTIFFS' INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure, and Local Rule 26.1(a), the Consumer Plaintiffs hereby provide their initial disclosures as follows:

These disclosures are made without waiver of, and with reservation of, the following:

1. All issues as to competency, relevancy, undue burden, materiality, privilege and admissibility of matters disclosed herein, and the subject matter thereof, as evidence for any purposes in any further proceeding in this action (including the trial of this action), and any other action;
2. The right to object to any matters disclosed here, or their subject matter, on any grounds in any further proceedings in this action (including trial) and any other action;
3. The right to object on any ground at any time to a demand or a request for further disclosure of matters identified here, including but not limited to,

requests for documents, interrogatories, depositions or other discovery proceedings involving or relating to the subject matter of this controversy;

4. These initial disclosures are made without the benefit of Defendants completed initial disclosures or any formal discovery. Consumer Plaintiffs have not completed their investigation of this case and these disclosures are based on information reasonably available to Consumer Plaintiffs as of this date. Consumer Plaintiffs reserve the right, and these disclosures should not be construed to limit the ability of Consumer Plaintiffs, to introduce additional evidence or legal theories as such evidence and theories are uncovered and developed through the discovery process and exchange of disclosure statements among the parties, in accordance with Rule 26(e). Consumer Plaintiffs further reserve the right to clarify, amend, modify or supplement the information contained in these initial disclosures at any time before trial.

**(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.**

As more fully set forth in their Amended Complaint the Consumer Plaintiffs bring this action against Home Depot for its failure to secure and safeguard customer credit and debit card numbers, three-digit security codes and other payment card data ("PCD"), personally identifiable information ("PII") such as the

cardholder's names, mailing addresses, e-mail addresses and other personal information (collectively "Personal Information"), and for failing to provide timely and adequate notice that Personal Information had been stolen and precisely what types of information were stolen. Although the class actions consolidated in this proceeding are in two discrete categories (Consumer Cases and Financial Institution Cases), the Court has created separate tracks to manage the litigation efficiently. These initial disclosures are intended to pertain exclusively to the Consumer Case track of the litigation.

Between approximately April 1, 2014 and September 18, 2014, Home Depot was subject to one of the largest retailer data breaches in U.S. history. Taking advantage of substantial weaknesses and vulnerabilities in the company's data security systems, hackers stole the personal and financial information of approximately 56 million Home Depot customers across the country. Remarkably, Home Depot would not have even discovered the breach when it did but for a blog post on a data security watchdog website reporting that reported massive batches of Home Depot customers' payment card information was being offered and sold to criminals across the globe through a black market website.

The Consumer Plaintiffs assert they have suffered real and imminent harm as a direct consequence of Home Depot's conduct, which includes (a) refusing to

take adequate and reasonable measures to ensure its data systems were protected; (b) refusing to take available steps to prevent the breach from happening; (c) failing to disclose to its customers the material facts that it did not have adequate computer systems and security practices to safeguard customers' personal and financial information; and (d) failing to provide timely and adequate notice of the Home Depot data breach.

Plaintiffs further allege that Home Depot management's attitude towards data security in the years and months leading up to the breach can best be described as willfully dismissive. Notwithstanding the warnings and pleas of many of its employees who recognized the vulnerability of millions of customers' sensitive information stored in Home Depot's systems, Home Depot management refused to upgrade its security systems, refused to follow recommendations of information technology ("IT") employees and experts, and suffered from ineffective leadership in key IT security positions within the organization. As a result, Home Depot customers throughout the United States suffered real and imminent harm as a direct consequence of Home Depot's conduct, which include:

- (a) unauthorized charges on their debit and credit card accounts;
- (b) theft of their personal and financial information;
- (c) costs associated with the detection and prevention of identity theft and

unauthorized use of their financial accounts;

(d) loss of use of and access to their account funds and costs associated with inability to obtain money from their accounts or being limited in the amount of money they were permitted to obtain from their accounts, including missed payments on bills and loans, late charges and fees, and adverse effects on their credit including decreased credit scores and adverse credit notations;

(e) costs associated with time spent and the loss of productivity from taking time to address and attempt to ameliorate, mitigate and deal with the actual and future consequences of the data breach, including finding fraudulent charges, cancelling and reissuing cards, purchasing credit monitoring and identity theft protection services, imposition of withdrawal and purchase limits on compromised accounts, and the stress, nuisance and annoyance of dealing with all issues resulting from the Home Depot data breach;

(f) the imminent and certainly impending injury flowing from potential fraud and identity theft posed by their payment card and personal information being placed in the hands of criminals and already misused via the sale of Consumer Plaintiffs' and Class members' information on the Internet black market;

(g) damages to and diminution in value of their personal and financial information entrusted to Home Depot for the sole purpose of purchasing products

and services from Home Depot and with the mutual understanding that Home Depot would safeguard Consumer Plaintiffs' and Class members' data against theft and not allow access to and misuse of their information by others;

(h) money paid for products and services purchased at Home Depot stores during the period of the Home Depot data breach in that Consumer Plaintiffs and Class members would not have shopped at Home Depot had Home Depot disclosed that it lacked adequate systems and procedures to reasonably safeguard customers' financial and personal information and had Home Depot provided timely and accurate notice of the Home Depot data breach;

(i) continued risk to their financial and personal information, which remains in the possession of Home Depot and which is subject to further reaches so long as Home Depot fails to undertake appropriate and adequate measures to protect Consumer Plaintiffs' and Class members' data in its possession.

Detailed factual allegations pertinent to the Consumer Plaintiffs' claims are set forth in the Consumer Plaintiffs' Consolidated Class Action Complaint (ECF No. 93) and incorporated herein.

**(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which plaintiff contends are applicable to this action.**

The Consumer Plaintiffs' Consolidated Class Action Complaint (Ecf. No. 93) identifies the following classes of individuals sought to be represented by this action as follows:

***Count I – Violations of Consumer Protection Statutes:*** Violations of the state consumer protection laws of 52 states and U.S. territories, which include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, U.S. Virgin Islands, Washington, West Virginia, Wyoming, and the District of Columbia. A list of the statutes supporting the claims asserted in Count I is contained in paragraph 290 of Consumer Plaintiffs' Consolidated Class Action Complaint (ECF No. 93).

***Count II – Data Breach Notification Statutes:*** Violations of state data breach notifications laws of 28 states and U.S. territories, which include Alaska,

California, Colorado, Delaware, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Montana, New Hampshire, New Jersey, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, Tennessee, Virginia, U.S. Virgin Islands, Washington, Wisconsin and Wyoming, and the District of Columbia. A list of the statutes supporting the claims asserted in Count II is contained in paragraph 302 of Consumer Plaintiffs' Consolidated Class Action Complaint (ECF No. 93).

***Counts III thru VI -- Nationwide Class:*** Based upon the content of the allegations contained in the complaint, Common law claims for Negligence (Count III), Breach of Implied Contract (Count IV), Unjust Enrichment (Count V) and Declaratory Judgment (Count VI) implicate a variety of particularized legal principles, standards and customs or usages, that will be applicable to this action in evaluating Home Depot's conduct in this data breach case. Consumer Plaintiffs intend to rely upon these materials to establish the requisite elements necessary to support said claims.

***Count VII -- California Class:*** Violation of California Law. The applicable statutes supporting the claims asserted in Count VII are the California Customer Records Act (Cal. Civ. Code §§ 1798.81.5 and 1798.84(b) & (e)) as well as the California Unfair Competition Law, (Cal. Bus. & Prof. Code § 17200 et. seq.)



**Count VIII -- Maryland Class:** Violation of Maryland Law. The applicable statutes supporting the claims asserted in Count VIII are the Maryland Personal Information Protection Act, Maryland Code, Commercial Law section 14-3501, et. sec., and the Maryland Consumer Protection Act, Maryland Code, Commercial Law section 13-101, et seq.

Additionally, Rule 23 of the Federal Rules of Civil Procedure and interpretive decisions and materials analyzing its application to the facts at issue in this case will be applicable to this action.

**(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A.)**

Consumer Plaintiffs believe the named-plaintiffs listed in “**Attachment A-1**” are likely to have discoverable information relevant to the issues presented in this case.

Consumer Plaintiffs believe that the Home Depot defendants are in the best position to know and identify their current and former officers, directors, employees, agents and/or vendors with discoverable information relevant to the Consumer Plaintiffs’ claims asserted in this case and that some of the relevant information lies within the exclusive possession, custody and custody of the

Defendants. However, excluding any person(s) or witnesses likely to be used solely for impeachment purposes, Consumer Plaintiffs have attempted to identify in “**Attachment A-2**” a list of certain current or former officers, employees, directors, agents and/or other individuals who may have discoverable information relevant to the Consumer Plaintiffs’ claims asserted in this case.

“**Attachment A-3**” contains a list of Governmental Agencies/Entities which may have relevant and discoverable information pertaining to the issues raised in this litigation.

“**Attachment A-4**” contains a list of Entities/Vendors doing business with Home Depot which may have relevant and discoverable information pertaining to the issues raised in this litigation.

As discovery has not commenced, or been allowed to proceed by operation of the Court’s local rules, the Consumer Plaintiffs expressly reserve their right to supplement the identity of additional persons and/or witnesses from which relevant information may be gleaned from discovery as such person(s) are later identified and determined.

**(4) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Responses to Initial Disclosures as Attachment B.)**

The determination as to the use of any person who may present evidence under the Federal Rules of Evidence has not yet been made. However, the parties have negotiated (and the Court has approved) a timeline for disclosure of any such persons and information. (See ECF. No. 107.)

**(5) Provide a copy of, or a description by category and location of, all documents, data compilations or other electronically stored information, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)**

Through their counsel during the course of investigating this case, Plaintiffs have performed extensive research from available sources (including public news accounts and public statements made by Home Depot in its financial papers and to the media in general) in order to identify and obtain information that may be used to support the claims asserted in this litigation. However, the relevance of such materials has not yet been made or determined. Included herein as “**Attachment C-1**”, Plaintiffs are providing a description and list of materials generally available from the Named Plaintiffs, which they currently have and will make available to Defendants for inspection and copying at a mutually available time and place.

The Consumer Plaintiffs further contend that Defendants are in the best position to know, and have possession of, materials relating to the Home Depot data breach, including without limitation information concerning Home Depot's data security systems, practices and procedures; Home Depot's obligations and protocols to safeguard customer data; information concerning warnings and alerts Home Depot may have received concerning vulnerabilities in its point-of-sale devices and data security systems; information concerning prior breaches of Home Depot's systems; measures Home Depot may have taken or considered taking to attempt to safeguard customer data; internal and external evaluations, analyses, investigations and reports related to its own data breach (or other data breaches); information concerning notices or disclosures that may have been provided by Home Depot concerning the data breach; information and materials Home Depot provided to, and requests or demands for information received from, investigating federal and state agencies relating to the Home Depot data breach; information, including communications, provided by Home Depot to the public concerning safeguarding customer data; information concerning Board of Directors meetings, minutes, oversight or communications relating to Home Depot data security measures, vulnerabilities, budget devoted to safeguarding consumer data; any efforts to comply with industry and other standards for safeguarding consumer

data; information concerning Home Depot's practices in obtaining, retaining, purging or deleting credit card account, purchase transaction and personal information concerning Home Depot customers; information concerning third-party vendors including vendors with credentials to access Home Depot's computer systems; information relating to Home Depot's credit card agreements and privacy policies; and other information relating to the Home Depot data breach.

**(6) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying as under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)**

Plaintiffs request monetary relief, including actual and statutory damages, restitution, and disgorgement, and injunctive relief requiring Home Depot to implement and maintain adequate security measures. However, the computation of damages is premature at this time as discovery has not begun. Consumer Plaintiffs will provide Defendant with this information as discovery, including expert discovery, proceeds and is exchanged pursuant to the Federal Rules of Civil Procedure and various stipulations and case management orders entered in this case.

**(7) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)**

The information sought by this portion of the Federal Rule is inapplicable to Consumer Plaintiffs.

**(8) Disclose the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in plaintiffs cause of action and state the basis and extent of such interest.**

The information sought by this portion of the Federal Rule is inapplicable and/or presently undetermined by Consumer Plaintiffs.

This 1<sup>st</sup> day of July, 2015.

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CUSTOMER DATA SECURITY )	Case No. 1:14-md-02583-TWT
BREACH LITIGATION )	
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**CERTIFICATE OF SERVICE**

This is to certify that I have this date served CONSUMER PLAINTIFFS' INITIAL DISCLOSURES on all parties by causing a true and correct copy to be filed with the Court's electronic filing system, which automatically transmits a copy to all counsel of record.

This 1<sup>st</sup> day of July, 2015.

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***Consumer Plaintiffs' Lead Counsel***

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