IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re: The Home Depot, Inc., Customer Data Security Breach Litigation	)	No. 1:14-md-02583-TWT
This Document Relates to: All Financial Institution Cases	)	

REQUEST FOR IMMEDIATE HEARING AND DISCOVERY AND SUPPLEMENTAL RESPONSE TO DEFENDANTS' MOTION FOR ENTRY OF ORDER REGARDING COMMUNICATIONS WITH POTENTIAL MEMBERS OF THE FINANCIAL INSTITUTION PUTATIVE CLASS

I. INTRODUCTION

A mere 36 hours after Home Depot filed a brief with this Court claiming to want to be "transparent" and arguing that the request of the Financial Institution Plaintiffs ("FI Plaintiffs") for a proposed order requiring that class communications be subject to prior review to prevent coercive and misleading statements was based on mere "speculation," named FI Plaintiffs and putative Class members in this litigation were sent highly misleading and coercive communications regarding a settlement agreement ("Settlement") reached between Home Depot and MasterCard International Incorporated ("MasterCard") that, if accepted, purports to release the claims pending in this action. Home Depot – either directly or

indirectly through others acting in concert with it – acted with no prior (or subsequent) notice to Class Counsel and without waiting for resolution of ***its own motion*** requesting permission to communicate with absent class members. Most tellingly, Home Depot began sending the communications hours before the Thanksgiving holiday, when Class Counsel and putative Class members would be otherwise occupied, requiring putative Class members to take action as soon as December 2, two days hence, without providing even the most basic information regarding the Settlement terms.

FI Plaintiffs file this supplemental response to Home Depot's Motion for Entry of Order Regarding Communications with Potential Members of the Financial Institution Putative Class, (ECF Nos. 141, 141-1 ("HD Motion")), to update the Court on the status of the apparent Settlement that purports to release the claims in this action and advise the Court of the misleading and coercive nature of the communications with putative Class members that already have occurred. Given the updated record described in this brief, FI Plaintiffs respectfully request that this Court set an immediate hearing on the HD Motion so that Home Depot can explain its actions, the scope and extent of Class member communications are

revealed, and the Court can rule on the HD Motion before the relief requested is rendered moot.

FI Plaintiffs also request that Home Depot be required to produce within 24 hours of this Court's order: (1) the Settlement (and any other settlement agreements it may have reached involving the release of putative Class members claims in this litigation), including the relevant attachments and underlying documents explaining and describing the recovery amounts and what amount pertains to the Alternative Recovery Offer ("ARO") (for which Home Depot is requesting a release) and what amount, if any, pertains to MasterCard's Account Data Compromise ("ADC") process (which by its own terms, as described in FI Plaintiffs' Response (ECF No. 142) to the HD Motion and admitted by Home Depot, does ***not*** require a release); (2) all communications regarding the Settlement that have been sent to putative Class members; and (3) a list of all those to whom the communications have been sent.

II. FACTUAL BACKGROUND

Last Monday, November 23, 2015, Home Depot filed its reply brief opposing FI Plaintiffs' position that the Court should oversee Home Depot's and its agents' communications with putative Class members regarding the settlement

or release of any claims in this action. ECF No. 145 ("HD Reply"). Home Depot claimed that FI Plaintiffs could "only speculate that the communications might mislead some putative class members." *Id*. at 2. Although Home Depot claimed to want to "be transparent" and told this Court that settlement discussions "are underway" (*id*. at 3, 4 n.2), it failed to disclose that the Settlement was imminent, and likely already consummated. Two days later, on the eve of the Thanksgiving holiday weekend, Wednesday, November 25, 2015, third-party payment processors, evidently acting in concert with Home Depot, sent email notifications to putative Class members – including named FI Plaintiffs known to be represented by counsel in this matter – stating that Home Depot and MasterCard had reached a settlement involving the Home Depot data breach. Some of the class communications state that failure to affirmatively opt out of the Settlement will result in a release of all claims pending in this case, without even specifically mentioning the litigation, or even telling the Class members how much they would receive under the Settlement.

FI Plaintiffs are aware of three different email communications that have been received by putative Class members. *See* Exs. A, B, C (attached to the Declaration of Joseph P. Guglielmo filed concurrently herewith). The email

communications were sent by FIS, Fiserv, and Vantiv, which, broadly described, are payment processors serving as intermediaries between financial institutions and MasterCard. These payment processors evidently are working as agents for MasterCard and Home Depot to implement the Settlement. Plaintiffs are unaware of whether other communications have been sent to putative Class members and do not know the identity of all those to whom the communications were sent.

The three communications of which FI Plaintiffs know about are plainly misleading and coercive. For example, the FIS communication consists of a single page notice of the Settlement, stating that each financial institution has received a "time-sensitive" offer giving them the option of receiving "an Alternative Recovery Offer (ARO) in lieu of any other recovery to which the Issuer may be entitled." Ex. A. It goes on to say that acceptance of the ARO will result in release of any recovery under "the MasterCard standards, which recoveries theoretically could exceed the eligible issuer's ARO," and also any recovery from "the putative financial institution class actions described above or any other litigation or proceeding relative to the Home Depot intrusion." *Id.* The former release confusingly suggests that the ARO is offered in lieu of the ADC recovery, *i.e.* that financial institutions must forego their rights under the ADC recovery

process (which does not require a release) to accept the ARO.[1] As to the latter release, despite what is written, the "putative financial institution class actions" are ***not*** described or even specifically named anywhere in the communication.

The Fiserv communication includes a lengthier – though vague and confusing – description of the release, but still does not mention this litigation. *See* Ex. B. Finally, the Vantiv communication provides only a cursory statement that "[b]y participating in the Alternative Recovery Program, you will release MasterCard, Home Depot USA, Inc. and its acquiring banks and processors from all claims related to the Home Depot breach." Ex. C. Once a bank clicks through to the form they are asked to fill out, the release language is included in miniscule print at the bottom of the page, where it finally mentions the class litigation, but no detail as to the claims or consequences of exiting the class action. *See* Ex. C.[2]

---

[1] Because Home Depot has not provided Class Counsel or putative Class members with a copy of the settlement agreement, it is unclear whether the ARO amount is in addition to or in lieu of the standard ADC amount to which the Class members are entitled. However, given Class Counsel's understanding that the ADC recovery is automatic, FI Plaintiffs assume the ARO is being provided in addition to the ADC recovery amount.

[2] Furthermore, the FIS and Fiserv releases appear to release any claims that a MasterCard issuing bank could have against Home Depot relating to Visa-branded cards (*see* Exs. A, B); the Vantiv release includes a carve out for non-MasterCard-branded cards. *See* Ex. C.

Importantly, despite the fact that Home Depot seeks a release of the claims in this action, in all cases financial institutions are asked to act quickly ***without access to the Settlement***. Financial institutions are not provided a total settlement amount or information about whether they are entitled to their standard ADC recovery if they reject the ARO. And the FIS and Fiserv communications do not even inform Class members the amount that each would receive if they participate in the Settlement. *See* Exs. A, B. All that a financial institution can discern from the communications is that a financial institution must act expeditiously by either December 2 (three business days after receiving the communications) or December 7 (six business days), and for at least the FIS communication, that failure to affirmatively opt out of the Settlement will result in a release of any and all claims against Defendants. Neither the FIS nor the Fiserv communication even references this case in the description of the release. *Id*. And, although the Vantiv communication references this case in its mention of the release, it provides no further details regarding the claims in the litigation and the consequences of releasing those claims. *See* Ex. C.

This lack of information, coupled with the extremely abbreviated deadline to respond, is likely to mislead putative Class members into believing that the

Settlement is their best (and perhaps only) avenue for recovery and coerce them to accept the recovery on an expedited basis and without knowledge of critical facts for fear of losing out. To illustrate how misleading this is, compare Home Depot's statement in the HD Reply – "Should putative class members choose not to accept any Card Brand settlement offers, they could still receive all that they would be entitled to under the Card Brand rules and continue litigating their claims in this lawsuit." – with the class communications described above. HD Reply at 14. However, in contrast to this statement made to the Court, the communications suggest that Class members who do not participate in the Settlement will receive nothing, foregoing money that under MasterCard's regulations they are entitled to receive without releasing their claims against Home Depot.

Under the cover of the MasterCard ADC program that never was intended to fully reimburse financial institutions' losses in the first place, Home Depot attempts to extinguish the putative Class members' claims against it, despite the fact that Home Depot's direct exposure to the financial institutions likely is much greater than what is available under the Settlement, but which is impossible to tell without actually seeing the terms of the Settlement and knowing what individual Class members would receive under it. Thus, FI Plaintiffs and putative Class

members are easily led to believe that the release is a required part of the standard ADC process and that this Settlement "covers" losses associated with the Home Depot data breach when, in fact, numerous losses are not even considered.

Despite Home Depot's threshold claim that financial institutions are sophisticated corporate entities that cannot be misled (HD Motion at 4; HD Reply at 2), FI Plaintiffs' counsel have received numerous contacts from confused Class members over the holiday, seeking advice and asking for clarification. The communications are so deficient, misleading, and coercive that based on the communications themselves ***no financial institution*** could make an informed decision as to whether to participate in the Settlement and thereby waive its legal rights in this action.

Finally, these communications, made days after briefing on the HD Motion was completed, do not even meet the requirements of Home Depot's own proposed order that ***it moved this Court to enter***. For example, Home Depot thought it appropriate in its briefing and proposed order that any settlement communication "provide details about the pending class action lawsuit, including the nature of the allegations" and "explain to the putative or absent class members that the settlement offer represents a lesser recovery than they may potentially recover if

they remain parties in the class action and are successful in this litigation." HD Reply at 7. But none of the class communications to date include anything near that level of disclosure. Home Depot also promised to provide those disclosures "within 24 hours of the written settlement offer and release being provided to the absent class members." *Id*. at 7 n.4. FI Plaintiffs have received nothing from Home Depot and learned about the communications only through Class members' receipt of the offers. Finally, Home Depot claimed that Class members would "have ample time to review the offers." *Id*. at 8. Home Depot cannot possibly claim that 3-6 business days is ample time to determine whether to exclude oneself from this action, particularly when those days fall immediately after a major holiday.

III. ARGUMENT

What is clear from the timing and substance (or lack thereof) of the communications is that Home Depot, the other parties to the Settlement, and those acting in concert with them do not want to make public the full details of the Settlement and to provide financial institutions the necessary information to make an ***informed*** decision as to whether to participate in the Settlement. Home Depot's actions require immediate Court intervention. Specifically, FI Plaintiffs request a

hearing on the HD Motion, an order directing Home Depot immediately to provide to FI Plaintiffs the Settlement and all communications that already have occurred with putative class members, and an order governing future class communications as FI Plaintiffs have requested based on the record as supplemented by this filing.

A. The Settlement Communications Are Coercive

As an initial matter, the urgent, time-sensitive nature of the communications ***sent during the Thanksgiving holiday*** is coercive, as a financial institution must act within three to six business days of dissemination of the notice by ***December 2*** (for those receiving the November 25 Vantiv notice) (*see* Ex. C) or ***December 7*** (for those receiving the November 25 FIS notice and the November 27 Fiserv notice) (*see* Exs. A, B). With regard to those receiving the Vantiv notice, a financial institution's failure to act by December 7 results in automatic enrollment in the Settlement. *See* Ex. C. This would automatically waive a financial institution's rights in this action – not that a financial institution would be aware of that. The communications are plainly intended to cause Class members to make a rushed decision without the benefit of time and information, gutting the claims in this litigation, and allowing Home Depot to shield itself from liability at the expense of Class members' recovery.

B. The Settlement Communications Provide Insufficient Information Regarding the Settlement and the Release

The notices do not even provide the most basic information – the aggregate settlement amount, the manner in which an issuer's recovery amount was calculated, whether there are two components to the settlement (the ADC component and the ARO component), that a release is not even required to receive the ADC component – to enable financial institutions to make an informed decision. For instance, the email from Vantiv disseminating notice, which states, "Each participating issuer will be compensated for the amount due to such issuer as calculated under MasterCard's ADC standards," (Ex. C), is confusing at best and misleading in suggesting the offered amount is the amount due to the issuer without providing any information about the actual calculation under the ADC standards (and the fractional portion of the losses being compensated under those standards). The FIS and Fiserv notices do not even specifically advise putative class members that participation in the Settlement will release the claims in this case. *See* Exs. A, B. The notices also do not advise that this action seeks broader relief than can be obtained through MasterCard's ADC limited reimbursement process, or explain that one can recover under the ADC process without accepting the ARO. This information is necessary to enable a financial institution to make an

informed decision as to whether to participate in the Settlement and forego its rights in this case.

C. The Settlement Communications Are Contradictory

The communications also are contradictory. One requires action by December 2, the others by December 7. *See* Exs. A, B, C. FIS requires a financial institution to ***affirmatively opt out*** of the Settlement to preserve its rights in this action (*see* Ex. A), whereas Vantiv requires that a financial institution *must* ***affirmatively opt in*** to participate in the Settlement. *See* Ex. C.

D. Good Cause Exists to Order Home Depot to Provide the Requested Documents

Good cause to require Home Depot to produce the requested documents – or if it fails to do so to allow expedited limited discovery so that the FI Plaintiffs can otherwise obtain them – exists here as the settlement communications not only are misleading and coercive, but require a financial institution's immediate action to preserve its legal rights in this action, without the benefit of full information. Indeed, for those receiving the Vantiv notice, a financial institution's failure to act by December 7 results in ***automatic*** waiver of its legal rights in this case. *See* Ex. C. Home Depot disseminated these communications through third parties on November 25, the day before Thanksgiving, and November 27, the day after

Thanksgiving, requiring putative Class members to act within three to six business days. Notwithstanding all of the other issues raised herein and in FI Plaintiffs' forthcoming Motion for Preliminary Injunction, ordering Home Depot to produce the requested documents or allowing limited expedited discovery is appropriate under these circumstances.

In *Mevorah v. Wells Fargo Home Mortg., Inc.*, No. 05-cv-1175, 2005 WL 4813532 (N.D. Cal. Nov. 17, 2005), the court dealt with a similar situation where a defendant had misleading pre-certification communications with putative class members. The defendant had contacted class members for interviews to serve as the basis of declarations to use against class plaintiffs, misleading the class members as to the nature of the class action and without informing the class members that if the class action was successful, they might be able to recover damages. *Id*., at *1. Based on the misleading nature of the communications, the court ordered the defendant to provide a complete list of all potential class members that had been contacted and allowed plaintiff to take discovery of those class members to determine the content of defendant's communication with the class members. *Id.*, at *6-7.

Likewise, in *Jones v. Jeld-Wen, Inc.*, cited by Home Depot throughout its briefing, the court ordered limited expedited discovery of defendant's communications to class members to "allow Plaintiffs' counsel to analyze whether the communications appear to interfere with the integrity of the class action." 250 F.R.D. 554, 565 (S.D. Fla. 2008). *Cf. In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106, 1123-33 (7th Cir. 1979) (when a classwide settlement was reached without the permission of all class counsel, the Seventh Circuit found abuse of discretion in trial court's refusal to permit discovery of settlement negotiations to determine fairness).

Because the misleading and coercive settlement communications jeopardize putative Class members' legal rights, good cause is shown for an order requiring Home Depot to produce the requested documents or, alternatively, allowing limited discovery to proceed so that Class Counsel and the Court can determine the extent to which Home Depot and those with whom it is acting in concert have interfered with the integrity of the class action, and so that Class Counsel can provide accurate advice to their clients and other Class members. As such, FI Plaintiffs request that the Court order Home Depot to provide: (1) the Settlement, including any attachments, and any summaries, calculations, or analysis of the

ARO and ADC amounts; (2) any communications Home Depot has caused to be sent to Class members; and (3) a list of all those to whom the communications have been sent. Alternatively, FI Plaintiffs request that the Court allow them to pursue limited discovery into these subjects.

E. FI Plaintiffs Are Entitled to an Order Governing Class Communications

As briefed in FI Plaintiffs' Response to Defendants' Motion Regarding Class Member Communications, pursuant to Rule 23(d) and its inherent equitable authority, the Court has discretion to regulate communications with potential class members, based on a clear record reflecting the need for such limitations. *See generally* ECF No. 142 ("Plaintiffs' Response"). Home Depot's briefing was entirely premised on its argument that there was no record of misleading communications, so an order governing class communications was premature. *See* HD Motion at 8, 13; HD Reply at 3-4. Home Depot and those with whom it is acting in concert to implement the Settlement have now created the very record Home Depot argued was necessary, making it appropriate for the Court to order the limitations on class communications requested here.

Because Rule 23 protects class members from "misleading communications from the parties or their counsel," *Erhardt v. Prudential Group*, *Inc*., 629 F.2d 843,

846 (2d Cir. 1980), this Court has the authority to issue orders governing such communications. As Judge Pauley has explained:

> Communications that threaten the choice of remedies available to class members are subject to a district court's supervision: A district court's duty and authority under Rule 23(d) to protect the integrity of the class and the administration of justice generally is not limited only to those communications that mislead or otherwise threaten to create confusion and to influence the threshold decision whether to remain in the class. Certainly communications that seek or threaten to influence the choice of remedies are . . . within a district court's discretion to regulate.

In re Currency Conversion Fee Antitrust Litigation, 361 F. Supp. 2d 237, 252 (S.D.N.Y. 2005) (citing *In re Sch. Asbestos Litig.*, 842 F.2d 671, 683 (3d Cir. 1988)). Thus, Rule 23 gives the Court the authority to issue orders to protect absent class members and allows the Court the ability to oversee this Settlement as it clearly will affect putative class members' rights and remedies.

Any unilateral communications scheme engineered by the defendant to a class action, or its partner acting in concert, is rife with potential for coercion, particularly in the context of an ongoing business relationship. *See Kleiner v. First Nat'l Bank*, 751 F.2d 1193, 1202 (11th Cir. 1985) ("[I]f the class and the class opponent are involved in an ongoing business relationship, communications from the class opponent to the class may be coercive."). This is because

"[u]nsupervised, unilateral communications with the plaintiff class sabotage the goal of informed consent by urging exclusion on the basis of a one-sided presentation of the facts, without opportunity for rebuttal. The damage from misstatements could well be irreparable." *Kleiner*, 751 F.2d at 1203. *See also* 3 Newberg on Class Actions §8.42 (4th ed.).

Financial institutions like the putative Class members in this case are in a particularly vulnerable situation, both because they depend on MasterCard's sophisticated network to serve their customers and because they do not have the specialized knowledge of the ADC Program and Security Rules that MasterCard has regarding its own intricate policies or the defined scope of benefits and liabilities. Here, the communications about the Settlement are both misleading and coercive where the communications, among other things:

- Failed to disclose that the ADC program does not require issuing banks to release any claims against Home Depot in order to participate in the ADC component, as these benefits are offered, and must be provided, by MasterCard without such strings attached;

- Failed to disclose that releases are not contemplated by the MasterCard operating regulations and that a release was included in this program solely to stop class members from getting more than the limited ADC defined benefits;

- Failed to provide putative class members with a copy of the Settlement or any settlement-related documents;

- Failed to disclose to putative class members that Home Depot has a narrower scope of liability to MasterCard than it has to issuing banks;

- Failed to disclose to putative class members that MasterCard has a narrower scope of liability to issuing banks than Home Depot does;

- Failed to disclose to putative class members the full scope of liability Home Depot faces by virtue of the direct claims made against it in the complaint via these processes or the difference between such recoveries and those that could be obtained by participating in this action;

- Capitalized on issuing banks' understanding of MasterCard as an entity with specialized knowledge in the intricacies of its own ADC process and Security Rules; and

- Used MasterCard's influential, trusted, and ongoing relationship with issuing banks to leverage unconscionably broad releases from issuing banks, who have claims against Home Depot that exceed the narrow scope of MasterCard's ADC process.

As a result of these misleading and coercive communications, the Court should limit future communications (whether directly by Home Depot or through third parties acting to implement Home Depot's settlement) with putative class members by means of the proposed order governing class communications requested by FI Plaintiffs in their response to the HD Motion. *See* ECF No. 142-1.

IV. CONCLUSION

Based on the foregoing points and authorities, FI Plaintiffs respectfully request that the Court: 1) set a hearing on the HD Motion; 2) order Home Depot to

provide the documents and information about the Settlement and communications with Class members described above, or, alternatively, allow FI Plaintiffs to conduct limited expedited discovery of the Settlement, attachments, and related analysis of ARO and ADC amounts, as well as any communications caused to be sent to class members about the Settlement; and 3) enter the proposed order request by FI Plaintiffs at ECF No. 142-1.[3]

DATED: November 30, 2015

Respectfully Submitted,

/s/ Joseph P. Guglielmo
Joseph P. Guglielmo
Erin Green Comite
SCOTT+SCOTT,
ATTORNEYS AT LAW, LLP
405 Lexington Avenue, 40th Floor
New York, New York 10174
Telephone: 212-594-5300
jguglielmo@scott-scott.com
ecomite@scott-scott.com
Co-lead Counsel

/s/ Kenneth S. Canfield
Kenneth S. Canfield
Georgia Bar No. 107744

[3] Plaintiffs may also seek further relief to redress what has occurred as a result of the communications referenced here, including but not limited to a preliminary injunction precluding Home Depot and those acting in concert with Home Depot from implementing the Settlement or enforcing any releases that have been provided to date by Class members.

DOFFERMYRE SHIELDS CANFIELD & KNOWLES, LLC
1355 Peachtree St., NE, Suite 1600
Atlanta, Georgia 30309-3238
Telephone: 404-881-8900
kcanfield@dsckd.com
Co-lead Counsel

/s/ Gary F. Lynch
Gary F. Lynch
Jamisen Etzel
CARLSON LYNCH SWEET& KILPELA, LLP
PNC Park, Suite 210
115 Federal Street
Pittsburgh, Pennsylvania 15212
Telephone: 412-322-9343
glynch@carlsonlynch.com
jetzel@carlsonlynch.com
Co-lead Counsel

W. Pitts Carr
W. PITTS CARR AND ASSOCIATES, PC
4200 Northside Parkway, NW Building 10
Atlanta, Georgia 30327
Telephone: 404-442-9000
pcarr@wpcarr.com
Co-liaison Counsel

Ranse M. Partin
CONLEY GRIGGS PARTIN, LLP
1380 West Paces Ferry Rd., NW, Suite 2100
Atlanta, Georgia 30327
Telephone: 404-467-1155
ranse@conleygriggs.com

Co-liaison Counsel

Plaintiffs' Steering Committee

James H. Pizzirusso
Swathi Bojedla
HAUSFELD, LLP
1700 K. Street, NW, Suite 650
Washington, DC 20006
Telephone: 859-225-3731
jpizzirusso@hausfeldllp.com
sbojedla@hausfeldllp.com
Plaintiffs' Steering Committee Chair

Joseph Hank Bates III
CARNEY BATES & PULLIAM
17 Washington Ave., N., Suite 300
Minneapolis, MN 55401
Telephone: 501-312-8500
jbates@cbplaw.com

Bryan L. Bleichner
CHESTNUT CAMBRONNE, PA
17 Washington Ave. North, Suite 300
Minneapolis, MN 55401
Telephone: 612-339-7300
bbleichner@chestcambronne.com

Brian C. Gudmundson
ZIMMERMAN REED, PLLP
1100 IDS Center
80 South 8th Street
Minneapolis, MN 55042
Telephone: 612-341-0400
Brian.gudmundson@zimmreed.com

Robert N. Kaplan
KAPLAN FOX & KILSHEIMER
850 Third Ave., 14th Floor
New York, New York 10022
Telephone: 212-687-1980
rkaplan@kaplanfox.com

W. Daniel Miles, III
Andrew E. Brasher
Leslie L. Pescia
BEASLEY ALLEN CROW MEHTVIN PORTIS & MILES
P.O. Box 4160
218 Commerce Street
Montgomery, Alabama 36103
Telephone: 334-269-2343
Dee.Miles@beasleyallen.com

Arthur M. Murray
MURRAY LAW FIRM
650 Poydras Street, Suite 2150
New Orleans, Louisiana 71030
Telephone: 505-525-8100
amurray@murray-lawfirm.com

Karen H. Riebel
LOCKRIDGE GRINDAL NAUEN
100 Washington Ave., So., Suite 2200
Minneapolis, MN 55401
Telephone: 612-339-6900
khriebel@locklaw.com

Vincent J. Esades
David R. Woodward
HEINS MILLS & OLSON, PLC
310 Clifton Avenue
Minneapolis, MN 55403
Telephone: 612-338-4605
vesades@heinsmills.com
dwoodward@heinsmills.com

Andrew N. Friedman
COHEN MILLSTEIN SELLERS TOLL
1100 New York Ave., NW
East Tower, 5th Floor
Washington, DC 20005
Telephone 202-408-4600
afriedman@cohenmilstein.com

Thomas A. Withers
GILLEN WITHERS & LAKE
8 E. Liberty Street
Savannah, Georgia 31401
Telephone: 912-447-8400
twithers@gwllawfirm.com

Counsel for the Financial Institution Plaintiffs

CERTIFICATION

The Undersigned hereby certifies, pursuant to Local Civil Rule 7.1D, that the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Civil Rule 5.1C.

/s/ Joseph P. Guglielmo
Joseph P. Guglielmo
SCOTT+SCOTT,
ATTORNEYS AT LAW, LLP
405 Lexington Avenue, 40th Floor
New York, New York 10174
Telephone: 212-594-5300
jguglielmo@scott-scott.com
Co-lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2015, I served all parties by causing a true and correct copy of the foregoing Request for Immediate Hearing and Discovery and Supplemental Response to Defendants' Motion for Entry of Order Regarding Communications with Potential Members of the Financial Institution Putative Class to be filed with the clerk of court using the CM/ECF system, which automatically sends a copy to all counsel registered to receive service.

/s/ Joseph P. Guglielmo
Joseph P. Guglielmo
SCOTT+SCOTT,
ATTORNEYS AT LAW, LLP
405 Lexington Avenue, 40th Floor
New York, New York 10174
Telephone: 212-594-5300
jguglielmo@scott-scott.com
Co-lead Counsel