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Home Depot To Pay \$13M To End Consumers' Breach Claims

By Allison Grande

Law360, New York (March 8, 2016, 4:41 PM ET) -- Home Depot has agreed to pay \$13 million, fund identity protection services, and implement new data security measures in order to resolve a putative class of consumers' claims over its massive 2014 data breach, according to documents filed in Georgia federal court Monday.

After seven months of negotiations, the putative class of consumers moved for preliminary approval of the proposed class settlement, which if approved would resolve the consumer plaintiffs' claims against Home Depot arising from the headline-grabbing data breach that exposed tens of millions of customers' payment card numbers and other personal information.

"The court should grant preliminary approval of the proposed settlement because it addresses the reasonable objectives of the litigation without the uncertainties class members would otherwise face in continued litigation," the plaintiffs wrote in their motion.

Under the terms of the deal, Home Depot would establish a cash fund of \$13 million to compensate class members for documented out-of-pocket losses, unreimbursed charges, and time spent remedying issues relating to the breach, according to the motion.

Consumers can recover up to \$10,000 each, including up to five hours of documented time at \$15 per hour, the motion said. Class members who submit claims for documented losses may also self-certify time spent remedying issues relating to the data breach at \$15 per hour for up to two hours, according to the motion.

In addition to the settlement fund, Home Depot will separately finance 18 months of "identity protection" services for all class members who had their payment card data exposed through the breach. The services will be available through Identity Guard's "Essentials" package, which provides Social Security number monitoring, online black market monitoring, identity theft victim assistance and identity theft insurance of \$1 million, among other benefits, the motion said.

If fewer than 40 million eligible class members enroll in the services, Home Depot will pay an additional \$6.5 million to cover this benefit, the motion said.

The retailer will additionally adopt and implement new data security measures to protect the personal and financial information of its consumers, and will pay the costs of class notice, costs associated with administering the settlement, and attorneys' fees and expenses, according to the motion.

Aside from asking for approval for the settlement, the plaintiffs additionally requested the certification of a nationwide settlement class that would reap the benefits of the deal. The proposed class would include approximately 40 million individuals who had their payment card data stolen, and 52 million to 53 million individuals who had their email address stolen, with some overlap between the two groups, according to the motion.

The plaintiffs argued that the proposed class satisfies the requirements for certification because members were all victimized by the same data breach and assert common claims related to that experience.

"A class action is superior to individual actions, as individual actions are unrealistic and consumers likely have no interest in separately litigating their claims," the consumers added.

The proposed deal brings to a close the consumer portion of litigation launched in 2014, shortly after the home improvement retailer **announced the breach** of their system in September of that year.

After the litigation over the data breach **was centralized by** the U.S. Judicial Panel on Multidistrict Litigation, Home Depot in a June motion to dismiss shot back at the consumers' claims it exposed sensitive financial information for millions of customers who shopped at stores in the U.S. and Canada between April and September 2014.

Specifically, the retailer **argued that the consumers** had not alleged any claims of financial damage that could be linked to the data breach, and that without tangible evidence of injuries, the consumers' claims failed under the U.S. Supreme Court's 2013 Clapper standard, which requires that alleged injuries must be "concrete, particularized, and actual or imminent."

The settlement announced Monday does not cover **claims lodged by financial institutions** over the breach, which are being litigated on a separate track but are in the same docket due to the JPML's refusal to group the banks' cases in an MDL separate from consumer claims.

A Home Depot spokesman told Law360 Tuesday that the deal was part of the retailer's efforts "to put the litigation behind us," although he stressed that the settlement was not an admission of liability.

"Keep in mind that customers were not responsible for fraudulent charges and we provided our customers free credit monitoring, when law enforcement and banking partners first alerted us of unusual activity," the spokesman added. "Our main focus has been our customers throughout."

A representative for the plaintiffs did not respond to a request for comment Tuesday.

The consumer plaintiffs are represented by co-lead counsel David J. Worley and James M. Evangelista of Harris Penn Lowry LLP, John A. Yanchunis Sr. of Morgan & Morgan Complex Litigation Group, and Norman E. Siegel and Barrett J. Vahle of Steve Siegel Hanson LLP; consumer liaison counsel Roy E. Barnes and John R. Bevis of The Barnes Law Group LLC; and steering committee members from Ahdoot and Wolfs PC, Girard Gibbs LLP, Lederman & Sherwood, Kantrowitz Goldhamer & Graifman PC and Stull Stull & Brody.

Home Depot is represented by Phyllis B. Sumner, S. Stewart Haskins II and J. Andrew Pratt of King & Spalding LLP.

The case is In Re: The Home Depot Inc., Customer Data Security Breach Litigation, case number 1:14-md-02583, in the U.S. District Court for the Northern District of Georgia.

--Editing by Emily Kokoll.

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