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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Home Depot Data Breach Attys' Fees Trimmed To \$7.5M

By **Y. Peter Kang**

Law360, Los Angeles (August 23, 2016, 10:15 PM ET) -- A Georgia federal judge on Tuesday granted final approval of a \$13 million settlement between Home Depot and a class of consumers suing over a massive 2014 data breach and awarded attorneys' fees of approximately \$7.5 million, about \$1 million less than the amount sought.

U.S. District Judge Thomas W. Thrash Jr. said the award of attorneys' fees of about \$7.54 million, expenses of approximately \$166,000 and service awards of \$1,000 to class representatives was fair and reasonable.

Although the consumers' attorneys sought approval of attorneys' fees of \$8.5 million, or 1.46 times the "lodestar" calculation of reasonable fees multiplied by the amount of time the consumers' legal team spent on the case, the judge said a multiplier of 1.3 was appropriate given the amount of time spent by the consumers' attorneys as well as the risks they took in bringing the suit.

"Class counsel obtained an exceptional result in this case," Judge Thrash wrote in a five-page order. "The relief obtained for the settlement class compares very favorably to the other data breach settlements presented to the court, and appears to be the most comprehensive settlement achieved in large-scale data breach litigation."

Home Depot had **objected** to the fees bid in July, saying it was excessive.

In a separate order, Judge Thrash signed off on the \$13 million settlement **announced in March**, saying the parties properly notified potential class members and said that the settlement amount was fair, reasonable and adequate.

Representatives for the parties did not immediately respond to requests for comment late Tuesday.

The deal's approval brings to a close the consumer portion of litigation launched in 2014, shortly after the home improvement retailer announced the breach of its system in September of that year.

The big box retailer had 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."

Claims lodged by financial institutions over the breach are being litigated separately. In that branch of the litigation, Home Depot **requested in July** an interlocutory appeal to the Eleventh Circuit on six questions of law, challenging whether the banks have standing to sue at all.

Fifty banks say the breach affecting 56 million customers was "the inevitable result" of Home Depot data security practices "characterized by neglect, incompetence and an overarching desire to minimize costs." They claim the retailer had ignored red flags, expert opinions, employee

warnings and industry standards in its repeated refusal to upgrade security and that their losses from the resulting fraud are in the billions.

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

The financial institution plaintiffs are represented by Joseph Guglielmo and Erin Green Comite of Scott & Scott LLP, Gary Lynch and Jamisen Etzel of Carlson Lynch Sweet & Kilpela LLP and Kenneth Canfield of Doffermyre Shields Canfield & Knowles LLC, as well as W. Pitts Carr and Associates PC, Conley Griggs Partin LLP, Hausfeld LLP, Carney Bates & Pulliam, Chestnut Cambronne PA, Zimmerman Reed PLLP, Kaplan Fox & Kilsheimer LLP, Beasley Allen Crow Mehtvin Portis & Miles, Murray Law Firm, Lockridge Grindal Nauen, Heins Mills & Olson PLC, Cohen Milstein Sellers & Toll PLLC, Gillen Withers & Lake and the Finley Firm PC.

Home Depot is represented by Cari Dawson and Kristine Brown of Alston & Bird 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.

--Additional reporting by Cara Salvatore, Steven Trader, Jody Godoy and Allison Grande. Editing by Joe Phalon.

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