

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE HUDSON'S BAY COMPANY  
DATA SECURITY INCIDENT  
CONSUMER LITIGATION

Civil Action No. 18-cv-8472 (PKC)

**ORDER CERTIFYING A SETTLEMENT CLASS, PRELIMINARILY  
APPROVING CLASS ACTION SETTLEMENT,  
AND DIRECTING NOTICE TO THE CLASS**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of Class for Settlement.

On April 5, 2018, the action styled *Beekman v. Lord & Taylor, LLC*, Case No. 1:18-cv-005210-UNA was filed in the United States District Court for the District of Delaware (the "*Beekman* Action") against Lord & Taylor LLC. On October 5, 2018, Lord & Taylor LLC filed its Motion to Transfer the action to the Southern District of New York pursuant to 28 U.S.C. § 1404(a). The Motion to Transfer was granted on April 25, 2019, transferring the *Beekman* Action on May 9, 2019 as Case No. 1:19-cv-04199. On April 11, 2018, the action styled *Sacklow v. Saks Incorporated*, Case No. 3:18-cv-00360 was filed in the United States District Court for the Middle District of Tennessee (the "*Sacklow* Action") against Saks Incorporated. On November 6, 2018, Saks Incorporated filed its Motion to Transfer the action to the Southern District of New York pursuant to 28 U.S.C. § 1404(a).

The Motion to Transfer was granted on April 25, 2019, transferring the *Sacklow* Action on May 9, 2019 as Case No. 1:19-cv-04186. On June 8, 2018, the action styled *Rudolph v. Saks & Company LLC*, Case No. 2:18-cv-05107 was filed in the United States District Court for the Central District of California (the “*Rudolph* Action”), against Saks & Company LLC. On September 12, 2018, Plaintiff Alexandria Rudolph and Saks & Company LLC jointly stipulated to transfer the *Rudolph* Action to this Court. The joint stipulation was granted on September 13, 2018, transferring the *Rudolph* Action on September 18, 2018 as Case No. 1:18-cv-08472. Defendants moved to dismiss the *Rudolph* Action, and the Court issued an order on May 7, 2019 granting in part and denying in part that motion.

On August 9, 2019, the plaintiffs in the *Beekman* Action, *Sacklow* Action, and *Rudolph* Action filed a Consolidated Class Action Complaint in the Southern District of New York in the newly styled action *In re Hudson’s Bay Company Data Security Incident Consumer Litigation*, Case No. 1:18-cv-08472 against Defendants, with the following plaintiffs: Bernadette Beekman, Debbie Carthan, John Cona, Wendy Haggarty, Julia A. Harris, Cassondra Joseph, Margo Kyler Knight, Jane Lefkowitz, Leslie Levitt-Raschella, Kelly Whitaker (formerly known as Kelly McGurn), Dennis Meduri, Georgina Meduri, Greta Moss, Larry Payne, Alexandria Rudolph, Jeanne Sacklow, Hope Tafet, Erika Targum, Latusha Vains and Mark Wade. A Second Consolidated Amended Class Action Complaint was filed on

September 20, 2019, removing plaintiffs Bernadette Beekman, John Cona, Hope Tafet, Latusha Vains, and Larry Payne (the “Complaint”). The Complaint asserts claims against Defendants for negligence, breach of implied contract, unjust enrichment/quasi-contract, breach of confidence, and violations of the following acts: Arizona Consumer Fraud Act, California Unfair Competition Law, California Consumers Legal Remedies Act, California Customer Records Act, Connecticut Unfair Trade Practices Act, Florida Deceptive and Unfair Trade Practices Act, Illinois Consumer Fraud Act, New Jersey Consumer Fraud Act, New Jersey Consumer Security Breach Disclosure Act, New York Consumer Law for Deceptive Acts and Practices, Texas Deceptive Trade Practices and Consumer Protection Act, Nevada Deceptive Trade Practices Act, and Georgia Fair Business Practices Act arising out of the Security Incident. “Security Incident” is defined in ¶ 1.24 of the Settlement Agreement entered into by the Parties.

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm’s-length negotiations, including mediation sessions before the Hon. Diane Welsh (Ret.). The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the settlement (“Settlement”), which, if approved, will result in dismissal of this action with prejudice.

Having reviewed the Settlement Agreement (ECF 177), including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiffs' Motion for Preliminary Approval is granted as set forth herein.<sup>1</sup>

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e), the Court provisionally certifies a class in this matter (the "Class") defined as follows:

All persons who used their credit, debit or prepaid debit card (other than a Saks First branded credit card) at a Saks, Saks OFF 5TH, or Lord & Taylor store in the United States and in U.S. territories from May 1, 2017 through April 1, 2018. Excluded from the Class are Defendants, any of their parents or subsidiaries, any entities in which they have a controlling interest, as well as their current and former officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns. Also excluded are any Judges to whom this case is assigned as well as his or her judicial staff and immediate family members.

The Court provisionally finds, for settlement purposes only, that: (a) the Class is so numerous that joinder of all Class Members would be impracticable; (b) there are issues of law and fact common to the Class; (c) the claims of the Representative Plaintiffs are typical of and arise from the same operative facts and seek similar relief as the claims of the Class Members; (d) the Representative Plaintiffs and Class

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<sup>1</sup> Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

Counsel will fairly and adequately protect the interests of the Class as the Representative Plaintiffs have no interest antagonistic to or in conflict with the Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Class; (e) questions of law or fact common to Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

**2. Representative Plaintiffs and Class Counsel.**

Plaintiffs Debbie Carthan, Bernadette Beekman, Julia A. Harris, Cassandra Joseph, Margo Kyler Knight, Jane Lefkowitz, Leslie Levitt-Raschella, Kelly Whitaker, Dennis Meduri, Giorgina Meduri, Greta Moss, Alexandria Rudolph, Jeanne Sacklow, Erika Targum, and Mark Wade are hereby provisionally designated and appointed as the Representative Plaintiffs. The Court provisionally finds that the Representative Plaintiffs are similarly situated to absent Class Members and therefore typical of the Class and that they are adequate representative plaintiffs.

The Court finds that Timothy J. Peter of Faruqi & Faruqi, LLP and Janine Pollack of Calcaterra Pollack LLP are experienced and adequate counsel and are hereby provisionally designated as “Class Counsel” pursuant to Federal Rule of Civil Procedure 23(g).

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Class and accordingly is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on January 11, 2022 at 2:30 p.m. in Courtroom 11D of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e); (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e); (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Class Counsel for an award of attorneys' fees and costs and expenses should be approved pursuant to Federal Rule of Civil Procedure 23(h);

and (f) the motion of Representative Plaintiffs for service awards should be approved.

The Representative Plaintiffs will cause to be filed with the Court their briefs in support of final approval, attorneys' fees, costs, and expenses, and service awards, including responses to any objections, no later than October 29, 2021.

6. **Administration.** The Court appoints Analytics LLC as the Settlement Administrator, with responsibility for class notice and claims administration. Defendants shall pay all the Costs of Settlement Administration up to \$250,000.00, with Plaintiffs' Counsel responsible for any amount in excess of \$250,000.00. These payments to the Settlement Administrator shall be made separate and apart from the relief being made available to Settlement Class Members under the Settlement.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, and the Claim Form, Publication Notice, and Long Form Notice attached to the Settlement Agreement as Exhibits A, B, and C, respectively, satisfy the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and (e)(1) and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

By September 20, 2021, the Settlement Administrator shall initiate the Notice Program, which shall be completed in the manner set forth in the Settlement Agreement.

8. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 7 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best notice practicable to the Class; (b) are reasonably calculated to apprise Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and the Court concludes that the Notice Program meets all applicable requirements of law, including Federal Rule of Civil Procedure 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

10. **Class Action Fairness Act Notice.** Defendants shall provide notice of the Settlement to the appropriate state or federal officials in accordance with the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1715.

11. **Exclusion from Class.** Any Class Member wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written opt out notice must clearly manifest a person's intent to be excluded from the Settlement Class. The written opt out notice must include the individual's name and address; a statement that he or she wants to be excluded from the Settlement Class; and the individual's signature. To be effective, the written opt out notice must be postmarked no later than November 19, 2021. No later than November 29, 2021, the Settlement Administrator shall provide the Parties with: (a) copies of all completed opt-out notifications, and (b) a final list of all who have timely and validly excluded themselves from the Settlement Class (the "Opt-Out Members"). No later than December 29, 2021, Class Counsel shall file this list of Opt-Out List Members with the Court for the purpose of being attached to the Judgment to be entered upon final approval.

All Class Members who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of or be bound by the terms of this Settlement Agreement. All Class Members who submit valid and timely notices of their intent to be excluded from the Settlement Class shall also waive and forfeit any and all rights he or she may have to appear separately and/or

to object to the Settlement Agreement. All Class Members who do not submit valid and timely notices of their intent to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Judgment entered thereon.

12. **Objections and Appearances.** No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Class Settlement Member shall be received and considered by the Court, unless the objection is mailed to the Clerk of Court, Class Counsel and Hudson's Bay's Counsel, at the addresses listed in the Notice, and postmarked by no later than the objection deadline, which is November 19, 2021. For the objection to be considered by the Court, the objection shall set forth (1) the name of the Litigation: *In re Hudson's Bay Data Security Incident Consumer Litigation*, 18-cv-8472 (PKC) (S.D.N.Y.); (2) the full name of the objecting Settlement Class Member and the full name, address, email address and telephone number of any person acting on behalf of the person's behalf; and (3) all grounds for the objection stated with specificity. Any Settlement Class Member who both objects to the Settlement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

13. **Claims Process and Distribution Plan.** Representative Plaintiffs and Defendants have created a process for assessing and determining the validity and value of claims and a methodology for distribution of benefits to Settlement Class Members on Approved Claims (the “Claims Process and Distribution Plan”), as set out in the Settlement Agreement and Exhibit D to the Settlement Agreement. The Court preliminarily approves the Claims Process and Distribution Plan described in the Settlement Agreement (including the exhibits thereto), and directs that the Settlement Administrator implement the Claims Process and Distribution Plan and effectuate the distribution of settlement benefits to Settlement Class Members according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a claim shall do so in accordance with the requirements and procedures specified in the notice and the Claim Form. If final Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the releases included in that Agreement, and the final Judgment.

14. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

15. **Use of Order.** This Order shall be of no force or effect if final Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Representative Plaintiffs or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this Litigation or in any other lawsuit.

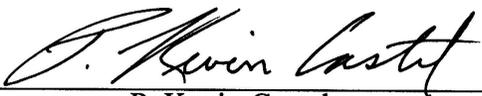
16. **Stay of Proceedings.** Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the final Judgment, or until further order of this Court.

17. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

18. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. The “Preliminary Approval Date” below is the date of entry of this Preliminary Approval Order. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

<b>Key Events</b>	<b>Deadlines</b>
Notice Program Commences	September 20, 2021
Motions for Final Approval and for Attorneys' Fees, Costs and Plaintiffs' Service Awards	October 29, 2021
Opt-Out Deadline	November 19, 2021
Objection Deadline	November 19, 2021
Responses to Objections	December 17, 2021
Final Approval Hearing	January 11, 2022 at 2:30 p.m.
Claims Deadline	January 31, 2022

IT IS SO ORDERED this 22nd day of July, 2021.

  
 P. Kevin Castel  
 United States District Judge