

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

ARKANSAS FEDERAL CREDIT UNION  
and THE SUMMIT FEDERAL CREDIT  
UNION, on Behalf of Themselves and All  
Others Similarly Situated,

Plaintiffs,

v.

HUDSON'S BAY COMPANY, SAKS FIFTH  
AVENUE LLC, SAKS & COMPANY LLC,  
SAKS INCORPORATED, and LORD &  
TAYLOR, LLC,

Defendants.

Case No. 19-cv-4492 (PKC)

**DECLARATION OF JOSEPH P. GUGLIELMO IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL**

I, Joseph P. Guglielmo, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am a partner in the law firm of Scott+Scott Attorneys at Law LLP (“Scott+Scott”), one of the attorneys representing Plaintiffs Arkansas Federal Credit Union and The Summit Federal Credit Union (“Plaintiffs”), and proposed Class Counsel in the above-captioned action (the “Litigation”) against Defendants Hudson’s Bay Company ULC (formerly known as Hudson’s Bay Company) (“HBC”), Saks Fifth Avenue LLC, Saks & Company LLC, and Saks Incorporated (collectively, “Saks”), and Lord & Taylor, LLC (“Lord & Taylor”) (collectively, “Hudson Bay” or “Defendants”, and with Plaintiffs, the “Parties”). I provide this Declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval. I have personal knowledge of all matters set forth herein, and would testify competently to them if called upon to do so.

2. Throughout my career, my law practice has focused on representing plaintiffs in complex civil litigation. For the last several years, I have spent the bulk of my professional time representing individual and financial institution plaintiffs in class action and multi-district litigation throughout the country and am currently serving, or have served, as lead, co-lead, or in other leadership positions in numerous federal and state class actions and multi-district proceedings, including: *In re Equifax, Inc., Customer Data Sec. Breach Litig.*, No. 1:17-md-02800 (N.D. Ga.) (appointed co-lead MDL counsel on behalf of financial institution plaintiffs arising out of 2017 data breach, final approval of \$32.5 million settlement granted); *In re Home Depot Data Breach Litig.*, No. 1:14-md-2583 (N.D. Ga.) (appointed co-lead MDL counsel on behalf of financial institution plaintiffs arising out of 2014 data breach, final approval of \$27.25 million settlement granted); *In re Target Stores Data Breach Litig.*, No. 0:14-md-02522 (D. Minn.) (appointed to executive committee in a large consolidated MDL stemming from the retailer’s 2013 data breach, final approval of \$59 million settlement granted ). A copy of Scott+Scott’s firm résumé, including my professional biography, is attached hereto as Exhibit 2.

3. The Parties have entered into a Settlement Agreement (the “Settlement”) after extensive arm’s-length negotiation extending over the course of numerous months. A true and correct copy of the Settlement is attached hereto as Exhibit 1. Based upon my experience serving

as lead counsel, and in other leadership positions, in class action litigation, it is my opinion that the proposed Settlement is fair, adequate, and reasonable, so as to satisfy the requirements for preliminary and, ultimately, final approval pursuant to Fed. R. Civ. P. 23.

4. On May 16, 2019, Plaintiffs initiated this action on behalf of themselves and all other similarly situated financial institutions. (ECF No. 1.) On August 27, 2019, Plaintiffs filed a First Amended Complaint that named additional parties as defendants. (ECF No. 51.) Following an exchange of letters, on November 4, 2019, Hudson Bay moved to dismiss the First Amended Complaint. (ECF No. 59.) By Order dated December 3, 2019, the Court granted Plaintiffs leave to file a Second Amended Complaint, which Plaintiffs filed that day. (ECF No. 65.)

5. By Order dated August 2, 2019, the Court ordered Plaintiffs to coordinate discovery with plaintiffs in the related consumer action, *In re Hudson's Bay Company Data Security Incident Consumer Litigation*, 18-cv-8472 (PKC) (S.D.N.Y.) (the "Consumer Litigation"). (ECF No. 46.) By Order dated September 26, 2019, the Court stayed discovery. (ECF No. 57.) By Order dated March 25, 2020, the Court partially lifted the discovery stay to allow the Parties to pursue third-party discovery as to certain payment card brands in advance of and for use in connection with an agreed-upon mediation. (ECF No. 69.)

6. On August 2, 2020, Defendant Lord & Taylor, LLC filed a voluntary petition for relief under chapter 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Virginia captioned *In re: Le Tote, Inc.*, Case No. 20-33332 (KLP). On August 5, 2020, Defendants filed a Suggestion of Bankruptcy, resulting in an automatic stay of this action. (ECF No. 74.) By Order dated March 26, 2021, the Court lifted the automatic stay for the limited purpose of allowing the parties to finalize their Settlement.

7. Beginning in March 2020, the Parties entered into settlement discussions, including one full-day mediation, overseen and guided by the Hon. Diane M. Welsh (Ret.). The Parties also participated in numerous direct discussions about possible resolution of the Litigation. On July 23, 2020, the Parties reported to the Court that they had reached a settlement in principle. (ECF No. 72.) A term sheet was executed on November 24, 2020. Following further extensive

negotiations regarding the settlement terms, the Settlement was finalized and executed on April 23, 2021.

8. The Parties did not negotiate the amount of Class Counsel's fees and expenses or Service Awards to the Settlement Class Representatives until after the key provisions of the Settlement, including the amount of relief to the Settlement Class, were agreed upon.

9. There are no other agreements made in connection with the Settlement. Each named Plaintiff provided substantial assistance that allowed Class Counsel to successfully prosecute and resolve this action, including by providing information and documents to Class Counsel, and actively participating in the mediation with the Hon. Diane M. Welsh (Ret.). Each named Plaintiff has approved the Settlement and consented to the submission of this proposed Settlement for the Court's approval.

10. Prior to commencing the Litigation, Class Counsel spent many hours investigating the claims against Hudson Bay. Class Counsel's factual and legal investigation included gathering information about Hudson Bay's security practices and information about the types of information compromised in the Data Breach, as well as a review of existing legal authority regarding potential legal claims.

11. Though party discovery was stayed effective September 26, 2019, (ECF No. 57), the Parties engaged in informal discovery that included Hudson Bay's production of the independent payment card industry forensic investigator report (the "PFI Report") that identified, in detail, the facts and circumstances related to the Data Breach. The PFI Report addressed the Data Breach and the Payment Card Industry Data Security Standards ("PCI-DSS") as they related to the Data Breach, as Plaintiffs alleged.

12. Class Counsel also engaged in extensive third-party discovery after the Court, on March 25, 2020, lifted the discovery stay to allow for the service of third-party subpoenas. (ECF No. 69.) Class Counsel issued subpoenas to the Card Brands – Visa, Mastercard, and Discover; Hudson Bay's acquiring bank, JPMorgan Chase; and to Le Tote, Inc., which, in 2019, purchased Lord & Taylor from HBC.

13. The information Class Counsel received from Hudson Bay and through third-party discovery provided Class Counsel with a clear understanding of Hudson Bay's potential liability and the strengths and weaknesses of Plaintiffs' claims.

14. Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in the Settlement and how best to serve the interests of the Settlement Class. Based on this investigation and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of the Action, and the substantial benefits to be received by the Settlement Class pursuant to this Settlement, that a settlement with Defendants on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

15. The Settlement will provide Settlement Class Members with significant monetary relief of up to \$4,000,000, plus meaningful injunctive relief, in exchange for resolving all claims against Defendants.

16. Under the terms of the Settlement, Settlement Class Members may receive: (1) \$1.85 for each Alerted-On Payment Card (the "Fixed-Payment Claim"); and (2) up to \$3,000 per Settlement Class Member as compensation for reimbursement paid to customers for fraudulent activity on Alerted-On Payment Cards incurred as a result of the Data Breach (a "Documented Out-of-Pocket Claim"). Defendants will pay up to \$3,000,000 towards Fixed Payment Claims, and up to \$1,000,000 million towards Documented Out-of-Pocket Claims. These amounts are consistent with other data breach cases that have been approved by courts throughout the United States.

17. Defendants have also agreed to meaningful injunctive relief and will hire a qualified security assessor on an annual basis to assess compliance with PCI-DSS requirements and achieve a Report on Compliance that evidences compliance with all such requirements; conduct annual PCI penetration testing in compliance with PCI-DSS Section 11.3, and remediate all critical vulnerabilities where feasibly possible; operate a system that is designed to encrypt, tokenize or

otherwise render unreadable in a manner recognized by PCI-DSS rules payment card information at the point of sale terminals in stores; maintain written information security programs, policies and procedures; and provide written confirmation that the items in PFI report §6.1 were completed and have not been reversed or undone. The injunctive relief set forth in the Settlement will be effective for a three-year period. The injunctive relief contained in the Settlement is consistent with other data breach cases that have been approved by courts throughout the United States.

18. I believe the injunctive relief will directly address many of the root causes that led to the data breach in the first instance and will help further safeguard Settlement Class Member payment card data.

19. For purposes of effectuating individualized, direct Mail Notice, Class Counsel has arranged for Visa, MasterCard, and Discover to identify each financial institution that issued an Alerted-On Payment Card. Class Counsel will provide relevant contact information to the Settlement Administrator, or arrange to have such information provided, for financial institutions that issued Visa, MasterCard, and Discover Alerted-On Payment Cards. I believe that the proposed Notice Plan represents the best practicable Notice to the Settlement Class Members.

20. I have reviewed the proposed Claim Form to be used by the Settlement Class Members to submit their claims. The Claim Form is simple and straightforward and requires only the provision of very basic information. Based upon my experience with the settlement of other class action data breach cases on behalf of financial institutions, I believe that the simplicity of the Claim Form will increase participation from Settlement Class Members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 27, 2021

/s/ Joseph P. Guglielmo  
Joseph P. Guglielmo