

**UNITED STATES DISTRICT COURT
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
INCORPORATED, and LORD & TAYLOR,
LLC,

Defendants.

Case No. 19-cv-4492 (PKC)

PRELIMINARY APPROVAL ORDER

This matter is before the Court on Plaintiffs’ Unopposed Motion for Preliminary Approval of the Settlement between Financial Institution Plaintiffs (“Plaintiffs”), for themselves and on behalf of the Settlement Class, and the Defendants Hudson’s Bay Company ULC (formerly known as Hudson’s Bay Company), Saks Fifth Avenue LLC, Saks & Company LLC, Saks Incorporated, and Lord & Taylor, LLC (collectively, “Hudson’s Bay” or “Defendants”) for consideration of whether the Settlement reached by the parties should be preliminarily approved, the proposed Settlement Class preliminarily certified, and the proposed plan for notifying the Settlement Class approved. Having reviewed the proposed Settlement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is likely to be certified for settlement purposes, and the proposed notice plan is approved.¹ Accordingly,

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement.

good cause appearing in the record, Plaintiffs' Motion is GRANTED, and **IT IS HEREBY ORDERED THAT:**

Provisional Certification of the Settlement Class

(1) The Court finds that it is likely to certify the following Settlement Class:

All financial institutions in the United States (including its Territories and the District of Columbia) that issued Alerted-On Payment Cards in connection with the Data Security Incident at Defendants' stores from May 1, 2017 to March 31, 2018.

Excluded from the Settlement Class are the Court, and any immediate family members of the Court; directors, officers, and employees of Defendants; parents, subsidiaries, and any entity in which Defendants have a controlling interest; and financial institutions who timely and validly request exclusion from the Settlement Class.

This Settlement Class is provisionally certified for purposes of settlement only.

(2) The Court determines that for settlement purposes the proposed Settlement Class likely meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the Settlement Class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the Settlement Class Representatives are typical of absent Settlement Class Members; that the Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class as they have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

(3) The Financial Institution Plaintiffs are designated and appointed as the Settlement Class Representatives.

(4) The following lawyer is designated as Class Counsel pursuant to Fed. R. Civ. P. 23(g): Joseph P. Guglielmo of Scott+Scott Attorneys at Law, LLP. The Court finds that Mr.

Guglielmo and Scott+Scott Attorneys at Law, LLP are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Proposed Settlement

(5) Upon preliminary review as required under Rule 23(e)(2), the Court finds it will likely be able to approve the proposed Settlement, that the Settlement appears to be fair, reasonable, and adequate, and that it warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Approval Hearing

(6) A Final Approval Hearing shall take place before the Court on December 7, 2021 at 2:30 p.m. in Courtroom 11D before United States District Judge P. Kevin Castel of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312, to determine, among other things, whether: (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Federal Rule of Civil Procedure 23; (b) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Complaint and Litigation should be dismissed with prejudice; (c) Settlement Class Members should be bound by the releases set forth in the Settlement; (d) the proposed Final Approval Order and Judgment should be entered; (e) the application of Class Counsel for an award of attorneys' fees, expenses, and notice and administration costs should be approved; and (f) the application for Service Awards to the Settlement Class Representatives should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing.

(7) Class Counsel shall submit their application for attorneys' fees, expenses, and notice and administration costs, and the application for Service Awards no later than November 1, 2021.

Objectors, if any, shall file any response to Class Counsel's motions no later than November 15, 2021. By no later than November 30, 2021, responses, if any, shall be filed to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, expenses, notice and administration costs, and Service Awards shall be filed.

(8) Any Settlement Class Member that has not timely and properly excluded itself from the Settlement Class in the manner described below, may appear at the Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member that has elected to exclude itself from the Settlement Class shall be entitled to object or otherwise appear.

Administration

(9) Analytics Consulting, LLC ("Analytics") is appointed as the Settlement Administrator, with responsibility for Claims Administration, the Notice Program, and all other obligations of the Settlement Administrator as set forth in the Settlement. The Settlement Administrator's fees, as well as all other costs and expenses associated with notice and administration, will be paid by Hudson's Bay, only to the extent provided in the Settlement.

Notice to the Class

(10) The Notice Program set forth in the Settlement, including the forms of Notice and Claim Form attached as exhibits to the Settlement, satisfies the requirements of Federal Rule of Civil Procedure 23 and due process and thus are approved. Non-material modifications to the

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 and to perform all other tasks that the Settlement requires.

(11) The Court finds that the form, content, and method of giving notice to the Settlement Class, as described in the Settlement and exhibits therefore: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

Exclusions from the Settlement Class

(12) Any Settlement Class Member that wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude itself to the Settlement Administrator, Class Counsel, and Equifax's counsel at the addresses provided in the Notice, postmarked no later than November 15, 2021 (the "Opt-Out Deadline") and sent via first class postage pre-paid United States mail. The written notification must include the name of this Litigation (the *Arkansas Federal Credit Union and Summit Federal Credit Union v. Hudson's Bay Company, et al.*, No. 19-cv-4492 (PKC) (S.D.N.Y.)); the full name, address, and telephone number of the Settlement Class Member; the name, address, email address, telephone number, position, and signature of the individual who is acting on behalf of the Settlement Class Member; the words

“Request for Exclusion” at the top of the document or a statement in the body of the document requesting exclusion from the Settlement; and the total number of payment cards issued by the Settlement Class Member that were identified as having been at risk as a result of the Data Security Incident in any alerts or similar documents by Visa, MasterCard, and Discover. If the Settlement Class Member fails to provide all of the required information on or before the deadlines specified in the Settlement and fails to cure any deficiency within the time allowed in the Settlement, then its attempt to opt out shall be invalid and have no legal effect, and the Settlement Class Member shall be bound by the Settlement, including the releases, if finally approved.

(13) All Settlement Class Members who submit valid and timely notices of their intent to be excluded from the Settlement shall not receive any benefits of or be bound by the terms of the Settlement. Any Settlement Class Member that does not timely and validly exclude itself from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Settlement Class Member that has not submitted a timely, valid written notice of exclusion from the Settlement (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement, and the Final Approval Order and Judgment.

(14) The Settlement Administrator shall provide the Parties with copies of all opt-out notifications promptly upon receipt and a final list of all that have timely and validly excluded themselves from the Settlement Class in accordance with the terms of the Settlement.

Objections to the Settlement

(15) A Settlement Class Member that complies with the requirements of this Order may object to the Settlement, the request of Class Counsel for an award of attorneys’ fees, costs, and expenses, and/or the request for Service Awards.

(16) No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class 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 15, 2021. For the objection to be considered by the Court, the objection shall set forth:

- a. the name of the Litigation: *Arkansas Federal Credit Union and Summit Federal Credit Union v. Hudson's Bay Company, et al.*, No. 19-cv-4492 (PKC) (SDNY);
- b. the full name of the objecting Settlement Class Member and the full name, address, email address, and telephone number of any person acting on the objector's behalf; and
- c. all grounds for the objection stated with specificity.

(17) 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.

Claims Process and Distribution Plan

(18) The Settlement establishes a process for assessing and determining the validity and value of claims and a methodology for paying Settlement Class Members that submit a timely, valid Claim Form. The Court preliminarily approves this process.

(19) Settlement Class Members that qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Settlement is finally approved, all Settlement Class Members that 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 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 of the Settlement, including the releases included in the Settlement, and the Final Approval Order and Judgment.

Termination of the Settlement and Use of this Order

(20) This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which 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 terms of the Settlement. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

(21) If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Hudson's Bay of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or

declaration by or against any Settlement Class Representative or any other Settlement Class Member that its claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims it may have in this Litigation or in any other lawsuit.

Stay of Proceedings

(22) Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

Continuance of Final Approval Hearing

(23) The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement 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.

Actions by Settlement Class Members

(24) The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Settlement Class Members against Hudson's Bay related to the Data Security Incident.

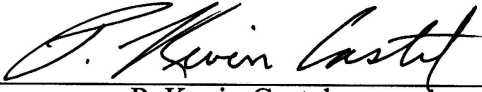
Summary of Deadlines

(25) The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include but are not limited to the following:

- Notice Deadline: August 23, 2021

- Objection and Opt-Out Deadline: November 15, 2021
- Claims Deadline: February 17, 2022
- Final Approval Hearing: December 7, 2021
- Application for Attorneys' Fees, Expenses and Service Awards ("Fee Application"): November 1, 2021
- Motion for Final Approval of the Settlement ("Final Approval Motion"): November 1, 2021
- Objectors', if any, Response to Final Approval Motion and Fee Application: November 15, 2021
- Replies in Support of Final Approval and Fee Motion: November 29, 2021

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



P. Kevin Castel
United States District Judge