

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re: The Home Depot, Inc., Customer
Data Security Breach Litigation

This document applies to:
FINANCIAL INSTITUTION CASES

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) Case No.: 1:14-md-02583-TWT
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DECLARATION OF KENNETH S. CANFIELD

(1) I am a lawyer licensed in Georgia, the District of Columbia, and Colorado and have been admitted to practice before the Supreme Court of the United States and numerous federal circuit and district courts, including this one. I am a founding partner in the firm of Doffermeyre Shields Canfield & Knowles, LLC in Atlanta, Georgia. I serve as co-lead counsel for the financial institution plaintiffs and have been active in all aspects of this litigation. The statements in this declaration are made on my personal knowledge or based upon information that was learned during discovery in this action.

(2) I have been engaged in the practice of law for nearly forty years. After graduating from Dartmouth College in 1974 and Yale Law School in 1977, I was a law clerk for Frank M. Johnson, Jr., then chief judge of the United States District Court for the Middle District of Alabama. Thereafter, I served in

Washington, D.C. as a special assistant to the head of the Civil Division in the United States Justice Department and later as a special assistant to the head of the United States Environmental Protection Agency. After four years of private practice in Denver, Colorado, I moved to Atlanta where I became counsel to the firm now known as Kilpatrick Townsend for several years. I formed my current firm in 1990. Through my career, my law practice has focused on complex civil litigation. For at least the last twenty years, I have spent the bulk of my time representing plaintiffs in complex class action and multi-district litigation and have served and am currently serving as lead, co-lead, or other leadership positions in numerous federal and state class actions and multi-district proceedings.

(3) Based on my decades of experience serving as lead counsel and in other leadership positions in major class action litigation, it is my opinion that the proposed settlement in this case is fair, adequate, and reasonable so as to satisfy the requirements for preliminary and ultimately final approval. This opinion is shared by Joseph Guglielmo and Gary Lynch, who serve with me as co-lead counsel for the financial institution plaintiffs, and by James Pizzirusso, who serves as Chair of the Plaintiffs' Steering Committee for the financial institution track.

(4) During the summer and fall of 2015 – after this litigation had been consolidated before this Court by the Judicial Panel on Multidistrict Litigation, the

Court had appointed leadership for the financial institution track, and co-lead counsel had been charged by the Court with, among other things, responsibility for conducting settlement negotiations on behalf of financial institutions – Home Depot embarked on an effort to negotiate settlements with and obtain releases from members of the putative class defined in plaintiffs’ consolidated amended complaint. Class counsel first learned of these efforts on the day before Thanksgiving, 2015, when several class representatives reported they were offered payment in exchange for a release of their claims and had been given only a few days to make a decision. Plaintiffs challenged the communications and sought to invalidate any releases Home Depot obtained. The Court opened discovery for several months to enable Plaintiffs to find out precisely what was happening, but allowed Home Depot’s settlement efforts to continue.

(5) Discovery revealed that in early summer of 2015 Home Depot received assessments from MasterCard and Visa under their card brand recovery processes that would have required Home Depot to pay tens of millions of dollars to financial institutions that had suffered losses as a result of the data breach at issue in this case; that Home Depot initially expressed unwillingness to pay the assessments; and that Home Depot later settled with Visa and MasterCard on terms that allowed Home Depot to use the card brand recovery processes to its benefit by

offering issuers a small premium over the amount they would otherwise receive in exchange for a release.

(6) Home Depot's offers were made in two phases. In Phase I, which began in late September or early October, 2015, Home Depot negotiated releases directly with the nation's largest payment card issuers, which in many cases also released the claims of smaller issuers that they sponsored. In Phase II, which began in approximately January, 2016, Home Depot extended offers to smaller issuers. Separately, Home Depot negotiated settlements with American Express and Discover, which as independent entities do not participate in the MasterCard and Visa recovery processes.

(7) As a result of its efforts, Home Depot was able to significantly pare down this litigation, mostly as a result of its success in negotiating settlements with the largest issuers. Plaintiffs estimate, very roughly, that between 70 to 80 percent of the payment cards compromised in the data breach are now subject to a release. Home Depot has paid out approximately \$14.5 million in premiums to MasterCard and Visa issuers in exchange for releases and spent \$79 million under Visa's GCAR program and \$41 million under MasterCard's ADC program to partially compensate financial institutions for their losses. Coupled with amounts paid under its settlements with American Express and Discover, Plaintiffs estimate

Home Depot has already paid more than \$140 million to financial institutions that were in the class as defined in the consolidated amended complaint.

(8) After the Court's ruling on Home Depot's motion to dismiss, the parties agreed to explore settlement with the help of a mediator and at the parties' request the Court stayed proceedings for that purpose. The first mediation occurred on July 28, 2016 in Chicago with Wayne Andersen, a former federal judge and experienced mediator. Little progress was made and the parties remained far apart, both with regard to their views of liability and damages. A second unsuccessful mediation took place on August 22, 2016 with Judge Andersen in Atlanta. On September 9, 2016, at the parties' request, the Court agreed to lift the stay because the prospects of a settlement were slight. Nevertheless, the parties kept talking and agreed to try mediation again with a different mediator.

(9) On October 6, 2016, the parties conducted a second mediation session in Atlanta presided over by Edward Infante, a former federal magistrate who has been successful in resolving countless complex class actions as a long time mediator with the San Francisco office of JAMS. No settlement was reached, but negotiations continued by telephone. When an impasse was reached, Judge Infante made a "mediator's proposal" to settle the major issues in dispute and gave the

parties until October 24, 2016 to accept or reject it. Each side accepted the proposal. Thereafter, the parties negotiated the other matters needed for a comprehensive settlement, and, on January 10, 2017, entered into a terms sheet containing the key provisions. The terms sheet was turned into a comprehensive settlement agreement, which was executed on March 8, 2017.

(10) The parties did not negotiate the amount of class counsel's fees and expenses or service awards to the class representatives until after the terms sheet containing the key provisions of the settlement, including the amount of the direct relief to the class, was agreed upon. The parties agreed that subject to the Court's approval the class representatives will receive service awards of up to \$2500. While Home Depot has agreed to pay reasonable fees and expenses separate from the other relief to the class, the parties have not reached agreement on the amounts. The class will be notified that Class Counsel may request its reasonable expenses and up to \$18 million in fees, which amounts to less than 30 percent of the total of the \$25 million settlement fund, the \$2.25 million available to pay sponsored entities, the costs of notice and administration, the fees and expenses of Class Counsel, and the \$14.5 million in premiums that Home Depot paid to obtain releases from financial institutions in the putative class under the MasterCard and Visa card brand recovery processes. Home Depot retains the right to object to

Class Counsel's request for fees and expenses and to appeal any award.

(11) The lawyers who were appointed by the Court to leadership positions in the financial institution track are abundantly qualified and experienced to represent the class, including specifically Mr. Guglielmo, Mr. Lynch, and Mr. Pizzirusso. Their background and firm profiles were previously provided to the Court in connection with the application of the "Consensus Group" for appointment to leadership positions filed on February 2, 2015. [Doc. 50 and 50-1]

(12) Subject to the Court's approval, the parties selected Angeion Group to serve as the settlement administrator after obtaining proposals from four separate administration firms. Angeion is a well-known administration firm that has successfully administrated many class action settlements. According to its website, www.angeiongroup.com, Angeion and its management team has administered over 2000 class action settlements and distributed over \$10 billion to class members. Attached to this declaration are materials that Angeion has provided describing its background in more detail.

(13) I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: March 8, 2017

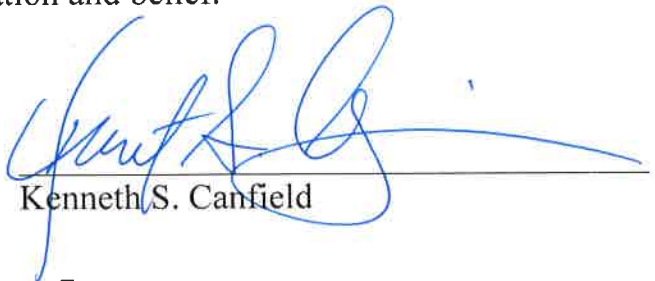
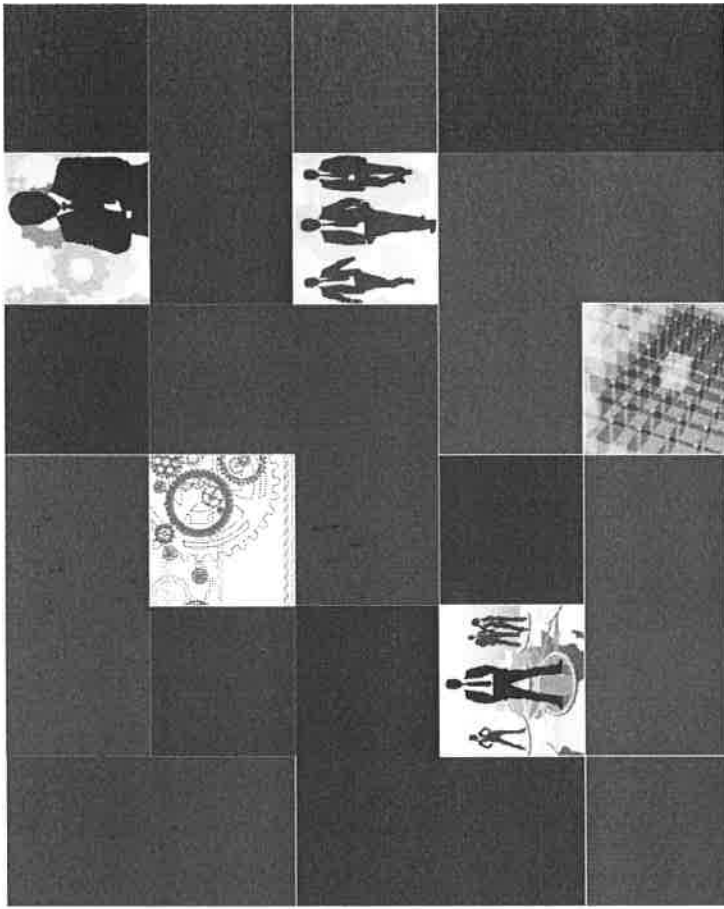

Kenneth S. Canfield

Exhibit to Declaration of Kenneth S. Canfield

Angeion Materials

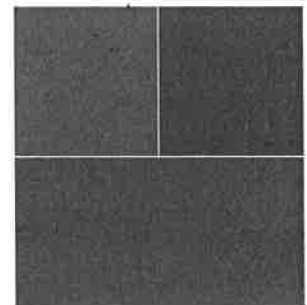


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Headquartered in a state-of-the-art 14,000 square foot processing center, Angelon is operationally-equipped to meet the needs of even the largest and most complex cases.

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Rely on the expertise and technology savvy of Angelon Group to manage your class action settlement needs at the highest level of precision and efficiency. Angelon's end-to-end class action services, best practice approaches, and dedicated operational infrastructure provide a streamlined and efficient administration path for all types of class action matters – large and small – including: Antitrust, Securities, Labor & Employment, and Consumer.

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LEGAL NOTICING SERVICES

Utilizing a measurable and industry-approved methodology, including the most targeted combination of traditional paid media (print and broadcast), digital, social and mobile media, and innovative direct marketing, Angelon Group implements notice plans for any class, regardless of unique demographic or linguistic requirements. Angelon works with counsel to develop the most cost-effective notice plan strategies to maximize class member reach and minimize cost.

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Angelon Group augments our core claims administration services with comprehensive support for all case-related requirements. Partnering with Angelon, counsel can access proven, value-added services including document review, electronic discovery and court reporting. Services are delivered through our sister-organization The Reliable Companies – an industry leader in e-discovery and litigation support, providing clients with access to expert professionals and leading edge technology.

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COMPANY OVERVIEW

Changing The Rules



Angeion Group is an industry-leading provider of turnkey services for claims administration and litigation support. The company's service offerings include class action claims administration, legal noticing services including class action notice plans, mass mailings of data breach notification letters, bankruptcy administration, mass tort administration, electronic discovery, document review and court reporting.

Formed by an executive leadership team with more than 60 years of collective industry experience, Angeion is bringing new ideas and fresh approaches to the business of claims administration.

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- » Noticing & Communications
- » Lien Resolution
- » QSF Fund Distribution

Litigation Support

- » Electronic Discovery Services
- » Court Reporting
- » Document Review

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Proven Experience

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An independent, nationally recognized, settlement administration company that has the culture of innovation in our DNA. We increase efficiency, provide accountability and afford counsel and the court peace of mind.

Best Practice Focus

Our team exemplifies accountability through a set of proven case management methodologies that form best practices and procedures for managing all phases of complex legal administration.

Technology Leadership

Angeion's professionals have a deep understanding of the role of technology throughout the end-to-end case settlement process and are experienced in the design and implementation of claims administration systems, case specific databases and websites, and other related services.

Transparent Processes

Angeion further leverages our technology expertise to bring a new level of transparency to claims administration, facilitating seamless claims processes and open lines of communication in even the most complex class action cases.

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Recent Judicial Recognition

***IN RE LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION- Civil
Action No. 08-SI(MCA)(LDW)***

Honorable Madeline Cox Arleo (June 17, 2016) *This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court has reviewed the notices attached as exhibits to the Settlement, the plan for distributing the Summary Notices to the Settlement Class, and the plan for the Publication Notice's publication in print periodicals and on the internet, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy*

FENLEY V. APPLIED CONSULTANTS, INC.—CIVIL ACTION NO. 15-259

Honorable Mark R. Hornak (June 16, 2016) *The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e)(1), and Due Process....*

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of the efforts of Angeion were highly successful and fulfilled all of those requirements.

FUENTES, et al. v. UNIRUSH, LLC d/b/a UNIRUSH FINANCIAL SERVICES et al. 15-CV-8372 (JPO)

Honorable J. Paul Oetken (May 16, 2016) *The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.*



**IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIGATION-
MDL No. 2001**

Honorable Christopher A. Boyko (May 12, 2016) *The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.*

SATERIALE, ET AL. V R.J. REYNOLDS TOBACCO CO., CASE NO. CV 09 08394 CAS

Honorable Christina A. Snyder (May 3, 2016) *The Court finds that the Notice provided to the Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.*

FERRERA ET AL. V. SNYDER'S-LANCE, INC., CASE NO. 0:13-CV-62496.

Honorable Joan A. Lenard (February 12, 2016) *The Court approves, as to form and content, the Long-Form Notice and Short- Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.*

POLLARD V. REMINGTON FIREARMS COMPANY, LLC ET AL. CASE 4:13-CV-00086

Honorable Ortrie D. Smith, (April 14, 2015): *The Notice Plan methodologies (a) protect the interests of the named Plaintiffs, the Settlement Classes, and Defendants, (b) are the best notices practicable under the circumstances, and (c) are reasonably calculated to apprise the Settlement Classes of the proposed Settlement, the Agreement, and their right to opt out and exclude themselves from or object to the proposed Settlement.*

In addition, the Court finds that the notice methodologies are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meet all applicable requirements of law, including, but not limited to, Fed R. Civ. P. 23

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION MDL NO. 2328

Honorable Sarah S. Vance (December 31, 2014): *To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court*



welcomes the inclusion of web-based forms of communication in the plan....The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process.

The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement.

Moreover, the plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

SOTO, ET. AL. V THE GALLUP ORGANIZATION, INC. CASE NUMBER 0:13-61747-CIV-MGC/EGT

Honorable Marcia G. Cooke (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

OTT V MORTGAGE INVESTORS CORPORATION OF OHIO, INC., NO. 3:14-CV-00645-ST

Honorable Janice M. Stewart (July 20, 2015) The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.

IN RE: COLGATE-PALMOLIVE SOFT SOAP ANTIBACTERIAL HAND SOAP MARKETING & SALES PRACTICES LITIGATION CASE NO. 1:12-MD-02320 PB

Honorable Paul Barbadaro (June 5, 2015) Dissemination of the Class Notice as set forth in the Notice Plan satisfies the requirements of due process and the Federal Rules of Civil Procedure.