

CANADA

SUPERIOR COURT  
(Class Action Division)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

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EVAN ZUCKERMAN

Representative Plaintiff

N°: 500-06-000686-143

v.

TARGET CORPORATION

Defendant

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**SETTLEMENT AGREEMENT, TRANSACTION AND RELEASE**

**Art. 590 of the *Code of civil Procedure* and Art. 2631 of the *Civil Code of Québec***

**PREAMBLE**

**A. WHEREAS**, on December 19, 2013, Target Corporation (“**Target**”) announced that it had been the victim of a criminal attack on its computer network by third-party intruders who stole credit and debit card information from Target stores located in the United States and contact information of Target guests. Target Canada stores located in Canada were not impacted (the “**Intrusion**”);

**B. WHEREAS**, on March 13, 2014, Representative Plaintiff filed a Motion for Authorization to Institute a Class Action and to ascribe the status of representative against Target alleging various damages based on Target's allegedly inadequate data security;

**C. WHEREAS**, on January 18, 2017, the Honorable Justice Hamilton of the Superior Court of Québec authorized the bringing of a class action in the form of an Originating Class Action Application in damages on behalf of all persons in Quebec whose payment card data and/or personal information was lost by and/or stolen from Target as a result of the data breach that occurred between at least November 27, 2013 and December 15, 2013;

**D. WHEREAS**, Target denies the allegations and denies all liability with respect to any and all facts and claims alleged in the Class Action;

**E. WHEREAS**, the settlement set forth in this Agreement is a product of sustained arm's length negotiations conducted before, during and after the August 3, 2017 mediation session before The Honourable Louisa Arcand, Judge for the Superior Court of Québec;

**NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:**

**1. PREAMBLE**

1.1 The preamble and enclosed schedules form part of this Agreement, as though recited at length;

**2. DEFINITIONS**

As used in this Agreement, the terms set forth in this section in boldface type will have the following meanings:

2.1 **“Agreement, Settlement or Settlement Agreement”** means the present settlement agreement including all schedules.

2.2 **“Cap”** means the maximum amount to be paid by Target for all Class Member claims which is set at \$345,000 (except for Class Representative’s claim);

2.3 **“Claims Form”** means the document that Class Members must complete and submit, along with the required supporting documentation, if applicable, in order to claim compensation under the Settlement Agreement, as set out in Schedule D hereto;

2.4 **“Claims Administrator”** or **“Settlement Administrator”** means Rust Consulting, Inc., the entity responsible for implementing and managing the claims process described in the Distribution Protocol, Schedule A hereto, or any other Administrator that the Court may appoint;

2.5 **“Class Action”** means the class proceedings brought against Target before the Superior Court of Québec bearing File No. 500-06-000686-143.

2.6 **“Class Counsel”** means the Plaintiffs' Counsel, the firm of Lex Group Inc.

2.7 **“Class Counsel Fees”** means the amount of \$150,000.00 plus GST and PST (calculated at the time of payment), as more fully detailed hereinbelow.

2.8 **“Class Members or Class”** means all persons in Quebec whose payment card data and/or personal information was lost by and/or stolen from Target as a result of the data breach that occurred between at least November 27, 2013 and December 15, 2013.

2.9 **“Class Representative”** means the Representative Plaintiff Mr. Evan Zuckerman or any other person named in his replacement prior to the approval of this Settlement Agreement.

**2.10 “Court”** means The Honourable Stephen W. Hamilton, Judge for the Superior Court of Québec, or such other Judge to whom the Class Action may hereafter be assigned.

**2.11 “Distribution Protocol”** means the protocol, substantially in the form of Schedule A, for distributing the settlement payments to Class Members who submit a valid Claims Form.

**2.12 “Intrusion”** means the data breach first disclosed by Target on December 19, 2013 impacting Target in the United States. The Target Canada stores located in Canada were not impacted.

**2.13 “Lost Time”** means Time spent by Class Members dealing with each type of Substantiated Losses.

**2.14 “Notice”** means the information, substantially in the form of Schedules B and C, to be provided to Class Members pursuant to the Distribution Protocol.

**2.15 “Released Parties”** means Target Corporation and its predecessors, successors, assigns and any other affiliates, parent companies as well as their respective directors, officers, shareholders, employees, agents, insurers and representatives.

**2.16 “Releasing Parties”** means the Class Representative and any Class Members who have not opted out of this Agreement (as detailed below), as well as their respective heirs, executors, representatives, agents, partners, successors and assigns.

**2.17 “Settlement Approval Hearing”** means the hearing to be held before the Court in order to seek the approval of this Agreement in its entirety.

**2.18 “Substantiated Losses”** means losses caused by the Intrusion for which the Class Member submits reasonable documentation, as more fully detailed hereinbelow.

**2.19 “Target’s Counsel”** means the law firm of Osler, Hoskin & Harcourt LLP.

### **3. APPROVAL OF THE SETTLEMENT**

**3.1** This Agreement is conditional upon the Court’s approval.

**3.2** As soon as possible after to the execution of the present Agreement and after notice has been given to Class Members, the parties shall present an application for the approval of the Agreement.

**3.3** In the event that the Court does not approve the settlement, the parties would be restored to the state in which they were on August 2, 2017.

**3.4** Notwithstanding the foregoing, Section 10.2 shall survive the termination of this Agreement.

#### **4. NOTICE, OPT OUTS, AND OBJECTIONS**

**4.1 Manner of Giving Notice to the Class.** The Claims Administrator will provide notice to Class Members, substantially in the form of Schedules B and C, as provided in the Distribution Protocol: one notice of the approval hearing will be published in The Montreal Gazette, Le Journal de Montréal and Le Journal de Québec upon approval by the Court. The publication of the Notice will be done at least 30 days prior to the Settlement Approval Hearing. The parties agree that there is no need for a second publication of the Notice following the approval of the Settlement Agreement, if any.

**4.2 Payment of Expenses Relating to Notice.** Target shall pay any and all expenses or costs associated with the preparation and/or publication of the Notice including, but not limited to, the Claims Administrator's fees. These payments shall be made separate and apart from the payments to Class Members and will in no circumstance be paid by the Class Members, the Class Representative or Class Counsel.

#### **4.3 Opt-Outs by Class Members and Objections**

**4.3.1 Procedure for Opt Outs.** The Parties will request that the Court order a procedure for Class Members wishing to be excluded from the Settlement Agreement ("opt out") in accordance with the provisions in the draft Notice attached as Schedules B and C. Each Class Member who does not submit a valid and timely request to opt out shall remain included in the Class and shall be bound by all proceedings, orders and Judgments in the Class Action. Furthermore, each Class Member who does not submit a valid and timely request to opt out shall be bound by the settlement and release provided in this Agreement. Within ten (10) days of the date set forth in the Notice by which opt out requests must be postmarked, the Claims Administrator shall send copies of all requests to opt out to Class Counsel and to Target's Counsel.

**4.3.2 Procedure for Objecting.** Unless otherwise authorized by the Court, any Class Member who has not opted out (as detailed above) and who intends to object to the fairness of this Agreement must do so in writing no later than twenty (20) days prior to the Settlement Approval Hearing (hereinafter the "Objection Date"). The written objection must be served on

Class Counsel no later than the Objection Date. The written objection must include (a) a heading which refers to the Zuckerman vs. Target Corporation Class Action and Court number; (b) the objector's name, address, telephone number(s), email address(es) and, if represented by counsel, the name, address, telephone number, fax number, and email address of counsel; (c) a statement whether the objector intends to appear at the Settlement Approval Hearing, either in person or through counsel; (d) a declaration that the objector considers himself/herself to be included in the Class; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; (g) a declaration under the penalty of perjury that the foregoing information is true and correct and (h) the objector's signature. Any Class Member who files and serves a written objection, as described above, may appear at the Settlement Approval Hearing, either in person or through counsel hired at the said Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement. Unless otherwise authorized by the Court, any Class Member who fails to comply with the above provisions shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and Judgments in the Class Action.

## 5. CONSIDERATION

**5.1 Distribution of Monetary Benefits to Class Members.** Class Members shall be eligible to receive monetary benefits in accordance with the Distribution Protocol. Notwithstanding anything to the contrary, total payments to Class Members, excluding the pre-approved claim of Mr. Evan Zuckerman, will not exceed the Cap of \$345,000.

**5.2 Claim by Class Representative.** Evan Zuckerman's claim will be considered by the parties to have been pre-approved in the amount of \$4,999.99. The pre-approved claim of Evan Zuckerman is excluded from the Cap. For avoidance of doubt, the parties hereby confirm and agree that Evan Zuckerman's pre-approved claim of \$4,999.99 will in no circumstance whatsoever be reduced in any way, except for the portion of said claim which must lawfully be paid to the *Fonds d'aide aux actions collectives* (Quebec Class Action Assistance Fund) (hereinafter, the "**Fonds**"). The Claims Administrator will pay said amount to Evan Zuckerman within 15 days after the judgment approving this Settlement becomes final, by way of a cheque payable to Evan Zuckerman, which cheque will be forwarded to Class Counsel.

**5.3 Payment of Expenses Relating to Benefit Distribution.** Target shall pay any and all expenses or costs associated with administration of the Distribution Protocol including, but not limited to, the Claims Administrator's fees. These payments shall be made separate and apart

from the payments to Class Members and will in no circumstance be paid by the Class Members, the Class Representative or Class Counsel.

## 6. RELEASE OF CLAIMS

**6.1 Release of Class Members' Claims.** As of the approval of this Settlement Agreement by the Court, each Releasing Party will be deemed to have completely released and forever discharged the Released Parties, and each of them, from and for any and all liabilities, claims, crossclaims, causes of action, rights, actions, suits, debts, damages, costs, attorneys' fees (except as otherwise provided herein), losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, stemming from the Intrusion and that were alleged or asserted against any of the Released Parties in the Class Action or that could have been alleged or asserted against any of the Released Parties arising out of the same nucleus of operative facts as any of the claims alleged or asserted in the Class Action ("**Released Claims**"), including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged in the Class Action or in any pleading and the disclosures and/or notices that Target made or failed to make to the Class Representative or the other Class Members about the Intrusion.

**6.2 Release of Claims of Class Representative, other Class Members, and Class Counsel.** As of the approval of this Settlement Agreement by the Court, the Released Parties will be deemed to have completely released and forever discharged the Class Representative, the other members of the Class, and Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Class Action.

**6.3 Future Suits.** Upon approval of this Settlement Agreement by the Court, the Class Representative and other Class Members who have not opted out shall renounce to any right to prosecute any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement and shall not seek compensation from any party that could claim contribution from the released parties. It is agreed that the Settlement may be

pleaded as a complete defense to any proceeding subject to this section, instituted by a Class Member who has not opted out.

## **7. CLASS COUNSEL'S FEES AND EXPENSES**

**7.1 Class Counsel's Fees.** As an integral part of this Agreement, Target agrees to pay the agreed upon attorneys' fees and expenses to Class Counsel separate and apart from payments to the Class Members. Target agrees to pay directly to Class Counsel the amount \$150,000 plus GST and PST calculated at the date of payment. The parties and their undersigned counsel hereby confirm that they consider this amount of \$150,000 plus GST and PST, which includes fees and expenses, to be fair and reasonable. The said Class Counsel Fees will be paid by Target to Class Counsel within 15 days after the judgment approving this Settlement becomes final.

**7.2 Fonds d'aide aux actions collectives.** Class Counsel shall reimburse, from the approved Class Counsel Fees, any amount owed to the Fonds, if any, relating to this file. Class Counsel hereby declares that it did not seek, and therefore did not receive, any financial assistance or funding from the Fonds relating to this file;

**7.3 No Additional Amounts Due.** Target shall not be liable for any additional attorneys' fees and expenses of Class Counsel or the Class Representative in the Class Action.

## **8. PUBLICITY**

In issuing public statements, including responding to any inquiries from the public media concerning the Class Action and/or the settlement of the Class Action, the Class Representative, Class Counsel, Target, and Target's Counsel will limit their statements to promoting the virtues of the settlement or other statements that comport with the Notices and the Agreement. Class Representative and Class Counsel shall not engage in any conduct or make any statement, directly or indirectly, that the settlement of claims contemplated by this Agreement constitutes an admission of liability or an admission of the validity or accuracy of any of the allegations in the Class Action by Target. However, nothing shall limit the ability of Target or its successors to make such public disclosures as the federal securities laws require or to provide information about the settlement to government officials or its insurers/reinsurers.

## **9. NOTICES**

Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email and/or facsimile as follows:

**To Plaintiff:**

David Assor  
LEX GROUP INC.  
4101 Sherbrooke Street West  
Westmount, Québec H3Z 1A7  
Email: [davidassor@lexgroup.ca](mailto:davidassor@lexgroup.ca)  
Facsimile: 514.940.1605

**To Defendant:**

Sylvain Lussier, Ad. E.  
OSLER, HOSKIN & HARCOURT, LLP  
1000 de la Gauchetière Street West  
Suite 2100  
Montréal, Québec H3B 4W5  
Email: [slussier@osler.com](mailto:slussier@osler.com)  
Facsimile : 514.904.8101

**10. MISCELLANEOUS**

**10.1 Entire Agreement.** This Agreement, and its schedules, contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement.

**10.2 No Liability.** This Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Parties have entered into the Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Agreement may not be used by any third party against any Party. The entering into and carrying out of the Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession by any of the Parties or a waiver of any applicable statute of limitations (except as provided by law), and shall not be offered or received into evidence in any action or proceeding against any Party in any court, administrative agency or other tribunal for any purpose whatsoever.

**11. REPRESENTATIONS AND WARRANTIES**

**11.1 Parties Authorized to Enter into Agreement.** Each person executing this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of Class Representative or Target covenants, warrants and represents that he or she is and has been fully authorized to do so by the Class Representative or Target. Class Representative and Target hereto further represents and warrants that they intend to be bound fully by the terms of this Agreement.

**11.2 Best Efforts.** Parties and their undersigned counsels agree that the terms of the Agreement reflect a good-faith settlement of disputed claims. They consider the settlement

effected by this Agreement to be fair and reasonable and will use their best efforts to seek approval of the Agreement by the Court. They each represent and warrant that they have not made, nor will they (a) attempt to void this Agreement in any way, or (b) solicit, encourage, or assist in any fashion any effort by any person (natural or legal) to object to the settlement under this Agreement.

**11.3 Governing Law and Jurisdiction.** This Agreement is intended to and shall be governed by and interpreted in accordance with the laws of the Province of Québec, Canada. The parties hereby submit to the exclusive jurisdiction of the Court of the Province of Québec, Canada, District of Montreal, concerning any and all issues related to the interpretation, application or execution of this Agreement.

**11.4 Agreement Binding on Successors in Interest.** This Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

**11.5 Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the parties. The signatories may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all signatories had signed the same instrument.

**11.6 Signatures.** Each person executing this Agreement warrants that such person has the full authority to do so. Signatures sent in pdf format by email will constitute sufficient execution of this Agreement.

**11.7 English Language.** The Parties acknowledge and agree that the present Settlement Agreement was drafted in the English language at the wish of the Parties thereto. In case of inconsistency between this Agreement drafted in English and any French translation thereof, the Agreement in English shall prevail. *Les parties reconnaissent et acceptent que la présente convention a été rédigée en langue anglaise à la demande expresse de toutes les parties y afférentes. En cas de divergence entre la présente convention rédigée en langue anglaise et toute traduction de cette convention en langue française, cette convention rédigée en langue anglaise prévaudra.*

**IN WITNESS WHEREOF**, the parties hereto and their attorneys signed on the dates and at the places detailed below.

**Montreal, Quebec, Canada**

**March 26, 2018**

*(s) Sylvain Lussier, Ad. E*

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Sylvain Lussier, Ad. E.  
OSLER, HOSKIN & HARCOURT, LLP  
1000 de la Gauchetière Street West  
Suite 2100  
Montréal, Québec H3B 4W5

Counsel for Defendant Target Corporation

**Montreal, Quebec, Canada**

**March 23, 2018**

*(s) David Assor*

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David Assor  
LEX GROUP INC.  
4101 Sherbrooke Street West  
Westmount, Québec H3Z 1A7

Class Counsel

**Minneapolis, Minnesota, USA**

**March 23, 2018**

*(s) Robin L. Preble*

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Robin L. Preble  
TARGET CORPORATION  
1000 Nicollet Mall  
Minneapolis, MN 55403

Defendant

**Montreal, Quebec, Canada**

**March 23, 2018**

*(s) David Assor*

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David Assor for Evan Zuckerman, duly  
authorized as he so declares

Class Representative