

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION**

ANNA CARROLL,	}	
	}	
Plaintiff,	}	
	}	
v.	}	Case No.: 2:18-cv-1060-RDP
	}	
MACY’S, INC., et al.,	}	
	}	
Defendants.	}	

PRELIMINARY APPROVAL ORDER

This matter is before the court on Plaintiff’s Unopposed Motion for Preliminary Approval of the Settlement (Doc. # 34) between Plaintiff Anna Carroll for herself and on behalf of the Settlement Class (collectively, “Plaintiffs”), and Macy’s Inc., Macy’s Retail Holdings, Inc., and Macy’s Systems and Technology, Inc. (collectively, “Macy’s”), 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 concludes as follows: (1) the proposed Settlement satisfies the criteria for preliminary approval, (2) the proposed Settlement Class should be preliminarily certified, and (3) the proposed notice plan should be approved.¹ Accordingly, for good cause shown, Plaintiff’s Motion (Doc. # 34) is **GRANTED**. The court **ORDERS** as follows:

Provisional Certification of The Settlement Class

- (1) The court provisionally certifies the following Settlement Class:

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

All residents of the United States who Macy's sent a notification in July 2018 concerning suspected unauthorized activity as a result of the Cyber Attack. The Settlement Class specifically excludes: (i) Macy's and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge or Magistrate Judge to whom the action is assigned and any member of those Judges' staffs or immediate family members; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Cyber Attack or who pleads *nolo contendere* to any such charge.

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

(2) The court determines that for settlement purposes the proposed Settlement Class 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 Plaintiff are typical of absent class members; that the class representative will fairly and adequately protect the interests of the Settlement Class as she has no interests antagonistic to or in conflict with the Settlement Class and has 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. Moreover, the court has considered all of the factors set forth in Rule 23(e) and has concluded that preliminary approval and notice to the Settlement Class is appropriate and warranted.

(3) Anna Carroll is designated and appointed as the Representative Plaintiff.

(4) The following lawyers are designated as Class Counsel pursuant to Federal Rules of Civil Procedure 23(g): Nicholas Armstrong and Oscar M. Price IV of Price Armstrong, LLC. The court finds that these lawyers are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Proposed Settlement

(5) Upon preliminary review, the court finds the proposed Settlement is fair, reasonable, and adequate, otherwise meets the criteria for approval, and warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Approval Hearing

(6) A final fairness and approval hearing (“Final Approval Hearing”) shall take place **at 10:00 a.m. CT on April 30, 2020** before the Honorable R. David Proctor at the Hugo L. Black United States Courthouse, 1729 5th Avenue North, Birmingham, AL 35203, 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 Judgment should be entered; (e) the application of Class Counsel for an award of attorneys’ fees (“Fee Award”), an award of costs and expenses (“Expense Award”), an incentive award to Representative Plaintiff (“Incentive Award”) 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 the Fee Award, Expense Award, and Incentive Award 30 days before the Final Approval Hearing. Objectors, if any, shall file any response to Class Counsel’s motion(s) no later than 17 days prior to the Final Approval Hearing. By no later than 10 days prior to the Final Approval Hearing, responses shall be filed, if any, to

any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for the Fee Award, Expense Award, and Incentive Award 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, and, further provided, that no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

Administration

(9) KCC Class Action Services, LLC ("KCC") is appointed as the Settlement Administrator, with responsibility for Claims Administration, the Notice Program, and all other obligations of the Claims 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 Macy's directly to KCC and separate and apart from the Settlement Fund, as 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 to be modified by the parties to reflect appropriate dates and contact information, satisfy 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, including converting and conforming the exhibits

to electronic or digital formats. 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: (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 Class

(12) Any Settlement Class Member that wishes to be excluded from the Settlement Class must mail a written notification of their intent to be excluded to the Settlement Administrator at the addresses provided in the Long Notice, postmarked no later than 135 days after the date of this Order (the “Opt-Out Deadline”) and sent via first class postage pre-paid United States mail. The written opt out notice must include the individual’s name and address; the name of this Litigation (i.e., *Anna Carroll v. Macy’s Inc. et al.*, Case No. 2:18-cv-01060-RDP (N.D. Ala.)), the words “Request for Exclusion” or a clear statement that he or she wants to be excluded from the Settlement Class; and the individual’s signature. If the Settlement Class Member fails to provide all of the required information on or before the Opt-Out Deadline, then their 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 Class 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 himself or herself 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 Class (in accordance with the requirements of the Settlement) shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the releases set forth in the Settlement and the 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, which either Class Counsel or Macy's shall file with the court no later than ten (10) days prior to the Final Approval Hearing. The final list of all who have timely and validly excluded themselves from the Settlement Class in accordance with the terms of the Settlement shall be attached as Exhibit A to the Judgment, if approved.

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 an incentive award (i.e., the Fee Award, Expense Award, and/or Incentive Award).

(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 electronically filed in the Litigation's electronic docket via CM/ECF no later than 135 days from the date of this Order, or if not electronically filed, sent via first class, postage-prepaid United States mail, postmarked no later than 135 days from the date of this Order, to (a) the Clerk of Court, United States District Court, Hugo L. Black United States Courthouse, 1729 5th Avenue North, Birmingham, AL 35203, (b) Class Counsel, Nicholas Armstrong and Oscar Price, IV, Price Armstrong, LLC, 2226 1st Ave. S, Suite 105, Birmingham, Alabama 35233; and (c) counsel for Macy's, Kristine M. Brown, Alston & Bird LLP, 1201 West Peachtree Street, Atlanta, GA 30309. Objections shall not exceed twenty five (25) pages. For the objection to be considered by the court, the objection shall set forth:

- a. the name of this Litigation (i.e., *Anna Carroll v. Macy's Inc. et al.*, Case No. 2:18-cv-01060-RDP (N.D. Ala.);
- b. the objector's full name, address, telephone number, and e-mail address (if any);
- c. proof of the objector's membership in the Settlement Class;
- d. a written statement, signed either by the objector or counsel, explaining the objector's grounds for the objection, including any legal support for the objection that the objector believes would be helpful to the court;
- e. the identity of all counsel representing the objector (if any) and a statement confirming whether counsel will appear at the Final Approval Hearing;
- f. a written statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;

- g. a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;
- h. a list of any other cases in which the objector (either directly or through counsel) has filed an objection to any proposed class action settlement within the last 3 years;
- i. a list of any other cases in which the objector's counsel (on behalf of a client) has filed an objection to any proposed class action settlement within the last 3 years;
and
- j. a list of any other cases in which the objector has been a named plaintiff or served as class representative in any class action.

(18) Any Settlement Class Member that fails to comply with the provisions in this Order will waive and forfeit any and all rights it may have to object and shall be bound by all of the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement and Judgment if finally approved. 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

(19) 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.

(20) 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 notices 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 notices 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 Judgment.

Termination of the Settlement and Use of this Order

(21) 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.

(22) 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 Macy's of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against Representative Plaintiff or any other Settlement Class Member that their 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

(23) 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 Judgment, or until further order of this court.

Continuance of Final Approval Hearing

(24) 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

(25) The court stays and enjoins, pending final approval of the Settlement, any actions, lawsuits, or other proceedings brought by Settlement Class Members against Macy's related to the Cyber Attack.

Summary of Deadlines

(26) 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: (ALL BELOW DATES ARE FROM PARTIES' JOINT STATUS REPORT (Doc. # 36), WHICH ASSUMED A PRELIMINARY APPROVAL DATE OF AUGUST 25, 2019.).

- Notice Deadline: October 9, 2019;
- Objection and Opt-Out Deadline: January 7, 2020 (if electronically filed) and January 3, 2020 (if postmarked);
- Claims Deadline: April 6, 2020;
- Final Approval Hearing: April 30, 2020;
- Application for Attorneys' Fees, Expenses and Service Awards ("Fee Application"): March 31, 2020;
- Motion for Final Approval of the Settlement ("Final Approval Motion"): March 31, 2020;
- Objectors', if any, Response to Final Approval Motion and Fee Application: April 13, 2020;

- Replies in Support of Final Approval and Fee Motion: April 20, 2020.

DONE and **ORDERED** this August 19, 2019.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE