

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

FIRST CHOICE FEDERAL CREDIT)	
UNION, individually and on behalf of)	
a class of similarly situated financial)	
institutions,)	
)	Case No. 1:14-cv-2975-AT
Plaintiff,)	
)	
v.)	
)	
THE HOME DEPOT, INC.,)	
)	
Defendant.		

**DEFENDANT’S RESPONSE TO PLAINTIFF’S OPPOSITION TO
DEFENDANT’S NOTICE OF RELATED CASE**

Plaintiff’s Opposition to Defendant’s Notice of Related Case (“Opposition”) rests upon a fundamental misunderstanding of the standard for assessing whether cases are related. This Court does *not* require perfect identity of the issues, arguments, and defenses. Rather, two cases are related as long as they involve the same facts and/or arise out of the same transaction or occurrence. Under this correct standard, this action is clearly related to the first-filed *Solak* action.

Plaintiff is wrong that the court in *ALW Marketing Corp. v. Drunasky*, No. 1:91-CV-545-RLV, 1991 WL 345313 (N.D. Ga. Dec. 30, 1991) held that two actions are related only if they have the same issues, arguments, and defenses.

(Opp. at 1-2.) Rather, the court simply found that the cases were related *because* they shared identical issues, arguments, and defenses; it did not hold that perfect identity is required. *Drunasky*, 1991 WL 345313, at *2.

This Court’s Internal Operating Procedures explain that a case is related “whenever the later-filed case involves: . . . (2) the same issue of fact or arises out of the same event or transaction included in an earlier numbered pending suit.” *Frazier v. Williams Fund Private Equity Grp.*, No. Civ. A. 1:06-CV-100-MH, 2006 WL 898178, *2 (N.D. Ga. Apr. 5, 2006) (citing N.D. Ga. IOP 905-2). Identity of issues, arguments, and defenses is not required. *See id.*

In its Opposition, Plaintiff acknowledges that this action and *Solak* arise out of the same alleged data security incident. (*See* Opp. at 2.) The facts relating to the incident, including Home Depot U.S.A., Inc.’s¹ conduct before, during, and afterwards are the same. Plaintiff has also requested that the Judicial Panel on Multidistrict Litigation consolidate this case with the *Solak* case, noting “Where, as here, pending cases bring forth claims against a common single Defendant and *are based on the same core factual allegations/events*, the Panel routinely has found common questions of fact.” *In re The Home Depot, Inc. Customer Data Security*

¹ The Complaint improperly names The Home Depot, Inc. as a defendant.

Breach Litig., MDL No. 2583, Dkt. 66 at 4 (J.P.M.L. Oct. 10, 2014) (emphasis added). Accordingly, this action should be related to the first-filed *Solak* action.

Respectfully submitted this 31st day of October, 2014.

By: /s/ Cari K. Dawson

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CERTIFICATE OF COMPLIANCE

I hereby certify that this **DEFENDANT'S RESPONSE TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S NOTICE OF RELATED CASE** was prepared in Times New Roman 14 point font, double-spaced, with a top margin of not less of 1.5 inches and a left margin of not less than 1 inch.

Respectfully submitted this 31st day of October, 2014.

By: /s/ Cari K. Dawson

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S NOTICE OF RELATED CASE** with the Clerk of Court using the CM/ECF system, and additionally served counsel for Plaintiffs by depositing copy of same in the United States Mail in an envelope with adequate postage affixed thereon, properly addressed as follows:

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