

**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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