

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

In re Arby's Restaurant Group, Inc.
Data Security Litigation

Case No. 1:17-cv-55555
Master Docket

CONSOLIDATED FINANCIAL
INSTITUTION CASE

Case No. 1:17-cv-00514
Financial Institution Case

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT
AND DIRECTING NOTICE TO SETTLEMENT CLASS**

This matter came before the Court on the Unopposed Motion for Preliminary Approval of Class Action Settlement ([ECF No. 293](#)) (the "Motion") of Plaintiffs Fort McClellan Credit Union, Midwest America Federal Credit Union, and Gulf Coast Bank & Trust Company. Terms not defined herein shall have the meaning set forth in the Settlement Agreement ([ECF No. 293-3](#)).

Financial institutions including Plaintiffs Fort McClellan Credit Union, Midwest America Federal Credit Union, and Gulf Coast Bank & Trust Company (the "Original Named Plaintiffs") filed the Financial Institution Plaintiffs' Consolidated Class Action Complaint ([ECF No. 165](#)) on May 19, 2017. In the Financial Institution Plaintiffs' Consolidated Class Action Complaint, the Original

Named Plaintiffs alleged various claims against Defendant Arby's Restaurant Group, Inc. ("Arby's") arising out of the installation by computer hackers of malware on Arby's network to access the point-of-sale systems at certain Arby's locations that was publicly disclosed by Arby's in February 2017 (the "Intrusion"), including common-law claims for negligence and negligence per se, seeking monetary, injunctive, and declaratory relief based upon Arby's allegedly inadequate data security in connection with the Intrusion. On March 5, 2018, following briefing and a hearing, the Court issued an Order ([ECF No. 287](#)) denying Arby's motion to dismiss the Consolidated Class Action Complaint. Fort McClellan Credit Union, Midwest America Federal Credit Union, Gulf Coast Bank & Trust Company, and Alcoa Community Federal Credit Union (the "Financial Institution Plaintiffs") filed the operative First Amended Consolidated Class Action Complaint (the "Financial Institutions Complaint") on August 3, 2018. On May 24, 2019, Alcoa Community Federal Credit Union moved to voluntarily dismiss its claims against Arby's ([ECF No. 465](#)). That motion was granted on June 12, 2019, dismissing Alcoa Community Federal Credit Union's claims with prejudice ([ECF No. 481](#)).

Settlement Class Counsel have conducted a thorough examination, investigation, and evaluation of the relevant law, facts, and allegations, and have

engaged in sufficient discovery to assess the merits of the claims set forth in the Financial Institutions Complaint and Arby's liability and defenses thereto.

The Settlement Class Representatives, by and through Settlement Class Counsel, and Arby's, by and through Arby's Counsel, have entered into the Settlement Agreement following good faith, arm's length negotiations conducted in substantial part in mediation overseen by Hunter R. Hughes III, in which the Parties have agreed to settle this action, pursuant to the terms of the Settlement, subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement. If approved, the Settlement Agreement will result in dismissal of the Financial Institutions Complaint with prejudice.

Having reviewed the Settlement Agreement, and all prior proceedings herein, and for good cause shown, it is hereby ordered that the Motion is granted as set forth herein.

1. **Defined Terms**. The Court, for purposes of this Preliminary Approval Order, adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein. *See* Settlement Agreement ([ECF No. 293-3](#)).
2. **Class Certification for Settlement Purposes Only**. For settlement purposes only and pursuant to [Federal Rule of Civil Procedure 23\(a\)](#), [\(b\)\(3\)](#), and (e), the Court provisionally certifies a class in this matter defined as follows:

All United States-based issuers of Visa and MasterCard payment cards that issued at least one Alerted-On Payment Card and do not validly request exclusion from the Settlement Class.

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of the Action and the claims made in the Financial Institutions Complaint.

3. **Settlement Class Representatives and Settlement Class Counsel.** The Court finds that the Settlement Class Representatives are similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that

they are adequate class representatives pursuant to Fed. R. Civ. P. 23(e)(2)(A). The Court finds that the following firms and individuals are experienced and adequate counsel and hereby appoints them as Settlement Class Counsel pursuant to Fed. R. Civ. P. 23(g):

James J. Pizzirusso
HAUSFELD LLP
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LOCKRIDGE GRINDAL NAUEN P.L.L.P.
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Brian C. Gudmundson
ZIMMERMAN REED LLP
1100 IDS Center, 80 South 8th St
Minneapolis, MN 55402

4. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds that the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to Class Members and accordingly is preliminarily approved.
5. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 332(d)(2) and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

6. **Final Approval Hearing.** A Final Approval Hearing shall be held on [DATE], 2020 at [TIME] in Courtroom 1705 before Judge William M. Ray II of the United States District Court for the Northern District of Georgia, located at the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive SW, Atlanta, GA 30303, to determine, among other things, whether: (a) the Action should be finally certified as a class action for settlement purposes pursuant to the class definition set forth above in Section 2; (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to [Fed. R. Civ. P. 23\(e\)](#); (c) the Financial Institutions Complaint should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) the Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the application of the Settlement Class Representatives for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved pursuant to [Fed. R. Civ. P. 23\(h\)](#); and (f) the application of the Settlement Class Representatives for Service Payments (the "Service Payments Request," and together with the Fee Request, the "Application") should be approved.

The submissions of the Parties in support of final approval of the Settlement shall be filed with the Court no later than thirty (30) days prior to the Final Approval Hearing and may be supplemented up to seven (7) days prior to the Final Approval

Hearing.

The Application shall be filed with the Court at least twenty-one (21) days prior to the deadline for submission of Objections, as defined in Section 11 herein.

7. **Administration.** The Court appoints KCC Class Action Services LLC as the Settlement Administrator, with responsibility for class notice and claims administration. Fees and expenses of the Settlement Administrator shall be paid by Arby's pursuant to its agreement with the Settlement Administrator, as provided in the Settlement.

8. **Notice to the Class.** The proposed plan for notification of Class Members set forth in Section 4.1 of the Settlement Agreement, the Notices attached to the Settlement Agreement as Exhibits 4 and 5, and the Claim Form attached as Exhibit A to the Distribution Plan, which is Exhibit 1 to the Settlement Agreement, are hereby approved.

9. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class Members as described in the Notice Plan: (a) will constitute the best practicable notice of the Settlement to the Class Members; (b) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of this Action, the terms of the Settlement, and their rights under the Settlement, including but not limited to their rights to object to the Settlement or

exclude themselves from the Settlement Class; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that both of the Notices are written in plain language, use simple terminology, and are designed to be readily understandable by Class Members.

10. **Exclusion from Class.**

The proposed procedures for Class Members to request to be excluded from the Settlement Class and for the handling of such requests set forth in Section 4.3 of the Settlement Agreement are hereby approved. No later than fourteen (14) days before the Final Approval Hearing date, the Settlement Class Representatives shall file the then-operative Opt-Outs Report with the Court. To the extent there is any dispute between the Parties regarding any determination made in the Opt-Outs Report filed with the Court, the Parties shall present such dispute to the Court for resolution no later than seven (7) days before the Final Approval Hearing.

11. **Objections and Appearances.** Any Settlement Class Member who complies with the requirements of this section may object to the Settlement, the Service Payments Request, and/or the Fee Request (an “Objection”).

No Objection of any Settlement Class Member shall be heard and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member in support of an Objection shall be received and considered by the Court unless, no later than ninety (90) days after the date this Order is entered, the Settlement Class Member files with the Clerk of the Court and serves on Settlement Class Counsel and Arby's Counsel written notice of the Objection by electronic filing or by mail at the addresses listed in the Notice attached to the Settlement Agreement as Exhibit 4.

Written notice of an Objection must include:

- (a) The name of this proceeding, *In re Arby's Restaurant Group, Inc. Data Security Litigation*;
- (b) The full name, address, and telephone number of the Settlement Class Member objecting;
- (c) A written statement of the Objection, as well as the specific reason(s), if any, for the Objection, including any legal or factual support the Settlement Class Member wishes to bring to the Court's attention;
- (d) Any evidence or other information the Settlement Class Member wishes to introduce in support of the Objection;
- (e) A statement of whether the Settlement Class Member or its counsel intends to appear and argue at the Final Approval Hearing;
- (f) Evidence or other information showing that the Settlement Class Member is a member of the Settlement Class; and
- (g) The name, address, email address, telephone number, position, and signature of a person authorized to make such decisions for the Settlement Class Member.

Any Settlement Class Member who retains an attorney to prepare the required written notice of an Objection and/or who intends to appear at the Final Approval Hearing through counsel must, in addition to the information stated above, include in the written notice of such Objection:

- (a) The attorney's experience with class actions, including the capacity in which the attorney participated in each class action (e.g., plaintiffs', defendants', or objectors' counsel) and the outcome of each case; and
- (b) Each case in which the attorney has previously represented an objector in a class action, the disposition or effect that any objection had on each class action case, and whether the attorney was paid for each case that was voluntarily dismissed, at any time, including on appeal.

Regardless of whether the Settlement Class Member employs an attorney to prepare the required written notice of such Settlement Class Member's Objection, the Settlement Class Member must sign the written notice of such Objection as an attestation that the Settlement Class Member has fully reviewed such written notice of Objection.

Any Settlement Class Member filing written notice of an Objection must make itself available to sit for a deposition regarding matters concerning the Objection and must provide, along with its Objection, dates when the objector will be available to be deposed from the date when the Objection is filed through the date seven (7) days before the Final Approval Hearing.

Any Settlement Class Member that fails to comply with the provisions in this

Section 11 of this Order shall waive and forfeit any and all rights it may have to make an Objection.

Any Settlement Class Member that files and serves written notice of an Objection as described above may appear at the Final Approval Hearing, either through an authorized representative or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Payments Request, and/or the Fee Request on the grounds set forth in such written notice. The Settlement Class Member must serve a notice of intention to appear on Settlement Class Counsel and on Arby's Counsel and must file said notice with the Court, either via electronic filing or by mail at the addresses provided in the Notice no later than ninety (90) days after entry of the Preliminary Approval Order.

If the Final Judgment is entered, any Settlement Class Member that fails to make an Objection in the manner prescribed herein shall be deemed to have waived its Objections and shall be forever barred from making any such Objections related to the Financial Institutions Complaint or in any other proceeding and from challenging or opposing, or seeking to reverse, vacate, or modify, the Final Judgment or any aspect thereof, including any approval in the Final Judgment of the Settlement Agreement, the Service Payments Request, and/or the Fee Request.

12. **Claims Process and Distribution Plan.** The Settlement Agreement contemplates a claims process. The Settlement Class Representatives and Arby's have created a process for assessing and determining the validity and value of Claims and a methodology for calculating payment to Settlement Class Members who submit a Valid Claim Form. The Court preliminarily approves the Distribution Plan attached to the Settlement Agreement as Exhibit 1 and directs that the Claim Form, or its substantial equivalent, be made available to Settlement Class Members in the manner specified in the Notice Plan. Arby's shall pay administration and class notice costs incurred by, including fees and expenses of, the Settlement Administrator in accordance with Arby's agreement with the Settlement Administrator, as set forth in the Settlement Agreement.

Settlement Class Members who 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 Final Judgment is entered, all Settlement Class Members who 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 the 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 in the Settlement Agreement and the Final Judgment.

13. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of November 13, 2019, including with respect to any deadlines existing in the action as of November 13, 2019, if the Settlement is terminated in accordance with Section 8.1 of the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, except that the provisions in Sections 8.2, 10, 12.2, and 12.8 of the Settlement Agreement shall survive, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

14. **Use of Order.** This Order shall not be construed or used as an admission, concession, or declaration by or against Arby's of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against any Settlement Class Representative or any other Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, or unavailable, or as a waiver by any Party of any defense of claims he, she, or it may have in this litigation or in any other lawsuit.

15. **Stay of Proceedings and Preliminary Injunction.** All deadlines in this action are stayed and suspended effective November 13, 2019, pending the Final

Approval Hearing and the Court's decision as to the issuance of the Final Judgment. Any actions or proceedings pending in any court in the United States filed by Settlement Class Members based on or relating to the Intrusion are stayed pending the Final Approval Hearing and the Court's decision as to the issuance of the Final Judgment.

In addition, pending the Final Approval Hearing and the Court's decision as to the entry of the Final Judgment, all Settlement Class Members are enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or other proceeding or order in any jurisdiction based on or relating to the Intrusion or the claims and causes of action alleged in the Financial Institution Complaint, other than any benefit from the MasterCard Assessment or the Visa Assessment. The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction. The Court further finds that no bond is necessary for issuance of this injunction.

16. **Continuance of Hearing**. 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 Settlement Website.

17. **Summary of Dates and Deadlines.**

Last day for Settlement Class Counsel to provide mailing addresses to Settlement Administrator (7 days after Preliminary Approval Order)	March 12, 2020
Last day for establishment of settlement website and toll-free number and for sending Mail Notice (28 days after Preliminary Approval Order)	April 2, 2020
Last day for Settlement Class Representatives and Settlement Class Counsel to file Application for fees and service payments (21 days prior to objection deadline)	May 28, 2020
Last day for Class Members to opt out of Settlement (90 days after Preliminary Approval Order)	June 3, 2020
Objection Deadline (105 days after Preliminary Approval Order)	June 18, 2020
Claims Deadline	July 3, 2020
Last day for submissions in support of final approval (30 days prior to Final Approval Hearing)	June 30, 2020
Last day to file declaration of Settlement Administrator and Opt-Outs Report (14 days prior to Final Approval Hearing)	July 16, 2020
Last day to supplement submissions in support of final approval Last day to submit disputes regarding Final Opt-Out Report (7 days prior to Final Approval Hearing)	July 23, 2020

Final Approval Hearing (a date to be set by the Court no earlier than 140 days after entry of this Order)	July 30, 2020 1:00 p.m. Courtroom 1705
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Dated: March 5, 2020



William M. Ray II
United States District Judge