

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

**If your financial institution issued payment cards that were identified as potentially being at risk of misuse as a result of the intrusion that Arby's announced in 2017, it may be eligible for a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been proposed to resolve a lawsuit against Arby's Restaurant Group, Inc. ("Arby's") brought by financial institution plaintiffs ("FI Plaintiffs") as a result of computer hackers installing malware on the point-of-sale systems at certain Arby's locations that Arby's first announced in February 2017 (the "Intrusion").
- The lawsuit, called *In re Arby's Restaurant Group, Inc. Data Security Litigation*, Case No. 1:17-cv-514 (N.D. Ga.), alleges that Arby's is legally responsible for the Intrusion and asserts claims for negligence and negligence per se. Arby's denies these allegations.
- The FI Plaintiffs brought the action as a class action on behalf of themselves and other similarly situated financial institutions allegedly affected by the Intrusion at Arby's.
- If the settlement becomes effective, Arby's will pay, on a claims-made basis, up to \$2,987,136 to fund distributions to those financial institutions who submit timely and valid claims, are covered by the settlement, and do not exclude themselves from the settlement. Arby's will also pay the costs of the notice and administration of the settlement.
- Your financial institution is receiving this notice because it may be one of the financial institutions covered by the settlement.

***Your financial institution's legal rights will be affected, whether it acts or not, if it is covered by the settlement and the settlement becomes effective. Read this notice carefully.***

<b>YOUR FINANCIAL INSTITUTION'S LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	If your financial institution is covered by the settlement, does not ask to exclude itself, and submits a valid claim, it will receive a cash payment if the settlement becomes effective. Submitting a claim is the only way for covered financial institutions to receive a payment as part of the settlement.
<b>EXCLUDE YOURSELF</b>	If your financial institution asks to be excluded from the settlement, it will not receive a cash payment but may still be able to file its own lawsuit against Arby's for the Intrusion. If the settlement becomes effective, excluding yourself from the settlement is the only option that allows you to file or be part of another lawsuit against Arby's concerning the claims being resolved by the settlement.
<b>OBJECT</b>	If your financial institution is covered by the settlement and does not ask to exclude itself, it can file an objection telling the court in charge of the litigation why it doesn't like the settlement. It can also ask to speak in court about its objection(s) to the settlement.
<b>DO NOTHING</b>	If your financial institution is covered by the settlement and does nothing, it will not receive a cash payment, and if the settlement becomes effective, it will give up its rights to be part of any other lawsuit against Arby's concerning the claims being resolved in the settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The court in charge of the litigation still needs to decide whether to approve the settlement. Payments otherwise due under the settlement will not be made unless and until that court approves the settlement and any appeals from that court's approval are resolved in a way that upholds the settlement, whereupon the settlement will subsequently become effective. Please be patient.

**Questions? Call 1-866-559-7582 or visit [www.arbysfisettlement.com](http://www.arbysfisettlement.com)**

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## BASIC INFORMATION

### 1. Why did I get this notice package?

Your financial institution may have issued payment cards included in one or more of the alerts sent out by Visa or MasterCard relating to the Arby's Intrusion and thus may be a member of the group of financial institutions covered by the settlement.

The court in charge of the litigation is the United States District Court for the Northern District of Georgia (the "Court"), and the litigation is known as *In re Arby's Restaurant Group, Inc. Data Security Litigation*, Case No. 1:17-cv-514. The financial institutions who are pursuing the litigation are the "Plaintiffs," and the company they are suing, Arby's, is the "Defendant."

The Court authorized this notice because, if your financial institution is covered by the settlement, you have a right to know about the proposed settlement of the litigation and about all of your options with respect to that settlement before the Court decides whether to approve the settlement. If the Court approves the settlement and any appeals from such approval are resolved such that the approval is fully upheld, the settlement will become effective and KCC Class Action Services, LLC, the settlement administrator appointed by the Court with responsibility for class notice and claims administration (the "Settlement Administrator"), will distribute any cash payments that are due under the settlement.

This package explains the lawsuit, the settlement, your financial institution's legal rights, what benefits are available, who is eligible for them, and how to get them.

### 2. What is the lawsuit about?

In February 2017, Arby's announced that computer hackers had installed malware on the point-of-sale systems at certain Arby's locations. Plaintiffs allege that Arby's negligently failed to provide sufficient data security, allowing unauthorized parties to access payment card data. Plaintiffs assert two negligence claims, one for common-law negligence and a second for negligence per se on the theory that Arby's violated the Federal Trade Commission Act. The lawsuit seeks damages for the costs that Plaintiffs claim were incurred by financial institutions as a result of the Arby's Intrusion, such as card reissuance costs, amounts paid to cover fraud losses, and other costs incurred on eligible accounts in responding to the Arby's Intrusion.

Arby's denies any wrongdoing or that it was negligent in any way. No court or other entity has made any judgment or other determination as to any wrongdoing or negligence by Arby's.

### 3. Why is this a class action?

In a class action, one or more entities called "class representatives" sue on behalf of themselves and other entities with similar claims arising from the matter at issue. All of these entities together are the "class" or "class members." Here, by bringing the lawsuit as a class action, Plaintiffs, as class representatives, seek to have the Court resolve both their own claims and the claims of other financial institutions against Arby's arising from the Arby's Intrusion.

### 4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Arby's. Instead, both sides agreed to a settlement. Settlements of class actions avoid the costs and uncertainty of a trial and related appeals, while providing benefits to members of the class. Plaintiffs and their attorneys think the settlement is best for all class members (as defined under Question 5 below).

## WHO IS PART OF THE SETTLEMENT

### 5. How do I know if my financial institution is covered by the settlement?

Your financial institution is a “Class Member” and covered by the settlement if:

- It is based in the United States (including its territories); and
- It issued one or more of the payment cards that were identified in a CAMS alert in the US-2017-0057 series in the case of Visa or in an ADC alert in the ADC002618 series in the case of MasterCard (“Alerted-On Payment Cards”). The accounts associated with the Alerted-On Payment Cards are the “Alerted-On Payment Card Accounts.”

### 6. Are there exceptions to being covered by the settlement?

All Class Members are covered by the settlement unless they take affirmative action to exclude themselves from the settlement by “opting out.” *See* Questions 13–15. Any Class Member that does not exclude itself will be a “Settlement Class Member” and the Settlement Class Members together will be the “Settlement Class.”

### 7. I’m still not sure if my financial institution is part of the settlement.

If you are still not sure whether your financial institution is covered by the settlement, you can ask for free help from the attorneys representing the Settlement Class (“Settlement Class Counsel,” *see* Question 16). You can also call 1-866-559-7582 or visit [www.arbysfisettlement.com](http://www.arbysfisettlement.com) for more information.

## THE SETTLEMENT BENEFITS

### 8. What does the settlement provide?

If the settlement becomes effective, Arby’s has agreed to pay, on a claims-made basis, up to \$1,439,888 to be distributed to Settlement Class Members with respect to their Alerted-On Payment Card Accounts that could not have qualified for assessments related to the Arby’s Intrusion under the Visa or MasterCard assessment programs (“Non-Assessed Payment Card Accounts”), and up to \$1,547,248 to be distributed to Settlement Class Members with respect to their other Alerted-On Payment Card Accounts (“Assessed Payment Card Accounts”).

Arby’s will also pay the charges of the Settlement Administrator for notifying the Class Members of and administering the settlement. Separate and apart from the payments being made available to Settlement Class Members and to the Settlement Administrator, if the settlement becomes effective, Arby’s has also agreed to pay no more than \$2,312,864 for service payments to the Settlement Class Representatives and for payment to Settlement Class Counsel of their fees, costs, and expenses. Arby’s also has agreed, if the settlement becomes effective, to adhere to certain data security requirements through 3 years from February 10, 2020 and not to take action against Visa seeking to prevent Visa from distributing to its issuers its assessment relating to the Intrusion, to the extent it has not been distributed already. Both Visa and MasterCard have maintained that their assessments are appropriate, despite appeals by Arby’s former acquiring bank. Both assessments, however, remain subject to potential legal challenges that will not be resolved by the settlement, other than Arby’s commitment not to take action against Visa seeking to prevent Visa from distributing its assessment to its issuers.

### 9. How much will my financial institution’s payment be?

If your financial institution is covered by the settlement (*see* Question 5) and does not opt out of the settlement (*see* Questions 13–15), it must submit a Claim Form to be eligible to receive a cash payment.

If your financial institution submits a valid Claim Form, it will be eligible for a payment if the settlement becomes effective. The maximum payments for Non-Assessed Payment Card Accounts and for Assessed Payment Card Accounts described above (*see* Question 8) were set such that it is expected that each financial institution that submits a valid Claim Form will receive a payment equal to (1) seventy-eight percent (78%) of

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the total number of your financial institution's Non-Assessed Payment Card Accounts multiplied by \$2.00 per account; plus (2) seventy-eight percent (78%) of the total number of your financial institution's Assessed Payment Card Accounts multiplied by \$0.32 per account. The seventy-eight percent (78%) figure is used in these calculations to reflect the fact that Visa and MasterCard ultimately determined that only approximately seventy-eight percent (78%) of the Alerted-On Payment Card Accounts were at risk of misuse as a result of the Arby's Intrusion. Please read the Settlement Agreement and Distribution Plan carefully to learn more about how the payments will be calculated.

## HOW TO GET A PAYMENT – SUBMITTING A CLAIM FORM

### 10. How can my financial institution get a payment?

To qualify for a payment, your financial institution must complete and submit a valid Claim Form. The Claim Form is attached to this notice and you can also get the Claim Form on the Internet at [www.arbysfisettlement.com](http://www.arbysfisettlement.com). Read the Claim Form carefully, include all information the form asks for, sign it, and file it through [www.arbysfisettlement.com](http://www.arbysfisettlement.com) by **July 3, 2020** or mail it postmarked no later than **July 3, 2020** to the Settlement Administrator at *Arby's FI Data Security Litigation*, Settlement Administrator, P.O. Box 43501, Providence, RI 02940-3501. The Settlement Administrator will review your financial institution's Claim Form to determine whether it is valid and, if so, to determine the amount of your financial institution's payment.

### 11. When would my financial institution get its payment?

Payments to Settlement Class Members will be made after the claims validation process is complete, the settlement is finally approved by the Court, any appeals from the Court's approval have been completed and have been resolved in a way that upholds the settlement, and the settlement thereby has become effective. The Court will hold a hearing on **July 30, 2020** to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals, which could take more than a year to resolve. You may visit [www.arbysfisettlement.com](http://www.arbysfisettlement.com) for updates on the progress of the settlement. Please be patient.

### 12. What is my financial institution giving up to get a payment and remain in the Settlement Class?

If your financial institution is covered by the settlement and it becomes effective, then unless your financial institution excludes itself from the settlement, it can't sue Arby's or be part of any other lawsuit against Arby's concerning the issues this settlement resolves. Unless your financial institution excludes itself, all of the decisions by the Court related to the settlement will bind it. The specific claims against Arby's that your financial institution will release in the event it does not exclude itself and the settlement becomes effective are described in Section 6 of the Settlement Agreement. The Settlement Agreement is available at [www.arbysfisettlement.com](http://www.arbysfisettlement.com).

The Settlement Agreement describes the released claims with specific language, so read it carefully. If you have any questions about what this language means, you can talk to the law firms listed in Question 16 for free or you can, of course, talk to your financial institution's own lawyer.

If your financial institution wants to keep its right to sue Arby's based on claims this settlement resolves, it must take steps to be excluded from the Settlement Class (*see* Questions 13–15).

## EXCLUDING YOUR FINANCIAL INSTITUTION FROM THE SETTLEMENT

### 13. How can my financial institution opt out of the settlement?

If your financial institution is covered by the settlement and wishes to be excluded from or "opt out" of the settlement, your financial institution must send a "Request for Exclusion" by U.S. Mail that includes the information below. If it fails to include this information, the Request for Exclusion will be ineffective and your financial institution will be bound by the settlement, including all releases, if the settlement becomes effective.

- The name of this proceeding, *In re Arby's Restaurant Group, Inc. Data Security Litigation*;

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- Your financial institution’s full name, address, and telephone number;
- The words “Request for Exclusion” at the top of the document or a statement in the body of the letter requesting exclusion from the Settlement Class;
- The number of Alerted-On Payment Card Accounts that your financial institution issued; and
- The name, address, email address, telephone number, position, and signature of a person authorized to make such decisions for your financial institution.

Your financial institution must mail the Request for Exclusion, postmarked no later than **June 3, 2020**, to:

*Arby’s FI Data Security Litigation*  
Settlement Administrator  
P.O. Box 43501  
Providence, RI 02940-3501

If your financial institution sends an effective Request for Exclusion, it will not receive any payment as part of the settlement, cannot object to the settlement, and will not be legally bound by anything that happens in the lawsuit. It may be able to sue Arby’s in the future. If your financial institution both objects to the settlement and sends an effective Request for Exclusion, it will be deemed to have excluded itself from the settlement and its objection will not be entertained by the Court.

**14. If my financial institution doesn’t exclude itself, can it sue Arby’s for the same thing later?**

No. If your financial institution is covered by the settlement, then unless your financial institution excludes itself from the settlement, it gives up any right to sue Arby’s for the claims that the settlement resolves, as further detailed in the Settlement Agreement, if the settlement becomes effective. If your financial institution has a pending lawsuit, it should speak to its lawyer immediately to assess whether it should exclude itself from the settlement and continue its own lawsuit. Remember, the exclusion deadline is **June 3, 2020**.

**15. If my financial institution excludes itself, can it get money from this settlement?**

No. If your financial institution excludes itself from the settlement, it will not receive any payment as part of the settlement. If your financial institution excludes itself, do not send in a Claim Form asking for payment.

**THE LAWYERS REPRESENTING YOUR FINANCIAL INSTITUTION**

**16. Does my financial institution have a lawyer in the lawsuit?**

Yes. The Court appointed Hausfeld LLP, Lockridge Grindal Nauen P.L.L.P., and Zimmerman Reed LLP as “Settlement Class Counsel” to represent your financial institution and other Class Members in the lawsuit. Your financial institution will not be charged for these lawyers. If your financial institution wants to be represented by its own lawyer, it may hire one at its own expense.

**17. How will the lawyers be paid?**

The Settlement Class Representatives will ask the Court to approve attorneys’ fees, costs, and expenses for Settlement Class Counsel and for service awards for the Settlement Class Representatives not to exceed a combined total of \$2,312,864. From this amount, the Settlement Class Representatives will seek up to a combined total of \$30,000 for service awards. Service awards are compensation to the Settlement Class Representatives for their efforts in pursuing the lawsuit, producing documents, and providing testimony on behalf of the Settlement Class. The Court will decide the total amount of attorney’s fees, costs, and expenses and service awards to be approved, and such total approved amount will be paid by Arby’s, provided the settlement becomes effective and such total approved amount does not exceed \$2,312,864. Any approval by the Court and/or payment by Arby’s of attorneys’ fees, costs, and expenses and service awards up to a combined total of \$2,312,864 will not reduce the benefits provided to the Settlement Class.

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The Settlement Class Representatives will make their request to the Court for approval of attorneys’ fees, costs, and expenses, as well as service payments, on or before **May 28, 2020**. This request will be available on the settlement website ([www.arbysfisettlement.com](http://www.arbysfisettlement.com)) (see Question 23).

**OBJECTING TO THE SETTLEMENT**

**18. How does my financial institution tell the Court that it doesn’t like the settlement?**

If your financial institution is a Settlement Class Member, it can object to the settlement if it disagrees with any aspect of the settlement. Your financial institution can in its objection give reasons why it thinks the Court should not approve the settlement. The Court will consider its views.

Your financial institution’s objection must be in writing and must include:

- The name of this proceeding, *In re Arby’s Restaurant Group, Inc. Data Security Litigation*;
- Your financial institution’s full name, address, and phone number;
- A written statement of each objection, as well as the specific reason(s), if any, for each objection, including any legal or factual support you wish to bring to the Court’s attention;
- Any evidence or other information you wish to introduce in support of your financial institution’s objection(s);
- A statement of whether a representative of your financial institution or the financial institution’s counsel intends to appear and argue at the Final Approval Hearing (see Question 20);
- Evidence or other information showing that your financial institution is a member of the Settlement Class; and
- The name, address, email address, telephone number, position, and signature of a person authorized to make decisions for your financial institution with respect to its objection(s).

If your financial institution hires a lawyer to represent it in preparing its objection or by appearing at the Final Approval Hearing, its counsel must provide additional information as specified in the Preliminary Approval Order (available on the settlement website at [www.arbysfisettlement.com](http://www.arbysfisettlement.com)).

Any objection must be either filed electronically with the Court no later than **June 18, 2020** or mailed to these three different places, postmarked no later than **June 18, 2020**:

<b>Court</b>	<b>Settlement Class Counsel</b>	<b>Defense Counsel</b>
Clerk of the Court USDC, Northern District of Georgia Richard B. Russell Federal Building 2211 United States Courthouse 75 Ted Turner Drive SW Atlanta, GA 30303-3309	James J. Pizzirusso HAUSFELD LLP 1700 K. Street, NW Suite 650 Washington, DC 20006  Karen H. Riebel LOCKRIDGE GRINDAL NAUEN P.L.L.P. 100 Washington Ave. S. Suite 2200 Minneapolis, MN 55401  Brian C. Gudmundson ZIMMERMAN REED LLP 1100 IDS Center, 80 South 8th St. Minneapolis, MN 55402	Douglas H. Meal ORRICK, HERRINGTON & SUTCLIFFE LLP 222 Berkeley Street Suite 2000 Boston, MA 02116

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In addition, any Settlement Class Member that objects to the settlement must make itself available to be deposed regarding the grounds for its objection and must provide, along with its objection, the dates when the objector will be available to be deposed during the period from when the objection is filed through the date seven days before the Final Approval Hearing.

**19. What's the difference between objecting and excluding/opting out?**

Objecting is simply telling the Court that your financial institution doesn't like something about the settlement. Your financial institution can object to the settlement only if it is a Class Member and does not exclude itself from the Settlement Class. Exclusion from or "opting out" of the settlement is telling the Court that the financial institution doesn't want to be included in the settlement. If your financial institution excludes itself, it will have no basis to object to the settlement because the settlement no longer affects it.

**THE COURT'S FINAL APPROVAL HEARING**

**20. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Approval Hearing at 1:00 p.m. on **July 30, 2020** 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. This hearing date and time may be moved. Please refer to the settlement website at [www.arbysfisettlement.com](http://www.arbysfisettlement.com) for notice of any changes.

At the Final Approval Hearing, the Court will consider whether to approve the settlement. If there are objections, the Court will consider them. The Court will listen to people who appear at the hearing (*see* Question 18). At the Final Approval Hearing, the Court may also consider and/or decide how much (if any amount) to approve as payment to Settlement Class Counsel for their fees, costs, and expenses and as service payments to the Settlement Class Representatives (*see* Question 17). At or after the Final Approval Hearing, the Court will decide whether to approve the settlement. It is not known how long these decisions will take.

**21. Does my financial institution have to attend the hearing?**

No. Settlement Class Counsel will answer questions the Court may have. Your financial institution may, however, send a representative at its own expense. If your financial institution submits an objection, it does not need to send a representative to come to the Court. As long as it submitted its objection on time and in the proper form, the Court will consider it. Your financial institution may also pay its own lawyer to attend, but it is not necessary.

**IF YOU DO NOTHING**

**22. What happens if my financial institution does nothing at all?**

If your financial institution is a Class Member and it does nothing, it will remain a part of the Settlement Class but will not receive any payments from the settlement. It will no longer be able to bring any action against Arby's concerning the claims being resolved through this settlement if the settlement becomes effective.

**GETTING MORE INFORMATION**

**23. How do I get more information?**

This notice summarizes the settlement. More details are available in the Settlement Agreement itself. You can get a copy of the Settlement Agreement at [www.arbysfisettlement.com](http://www.arbysfisettlement.com).

*Please do not contact the Court with questions about the settlement.*

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