

**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-514-WMR
Case No. 1:17-mi-55555-WMR**

**CONSOLIDATED FINANCIAL
INSTITUTION CASE**

**PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF
REASONABLE ATTORNEYS' FEES AND EXPENSES AND CLASS
REPRESENTATIVE SERVICE PAYMENTS**

Plaintiffs respectfully request that this Court approve Plaintiffs' application for an award of reasonable attorneys' fees and reimbursement of expenses in the combined amount of \$2,282,864, and service payments of \$10,000 per Settlement Class Representative. This motion is based on the accompanying memorandum and exhibits, which includes a fully executed copy of the Settlement Agreement entered into by the parties.

Dated: May 28, 2020

/s/ Kenneth S. Canfield
Kenneth S. Canfield
Ga. Bar No. 107744
**DOFFERMYRE SHIELDS
CANFIELD & KNOWLES, LLC**
1355 Peachtree St., NE, Suite 1900
Atlanta, GA 30309
Telephone: 404.881.8900
Facsimile: 404.920.3246
kcanfield@dsckd.com

*Liaison Counsel for Plaintiffs and the
Class*

s/ Brian C. Gudmundson
Brian C. Gudmundson
(admitted pro hac vice)
ZIMMERMAN REED LLP
1100 IDS Center, 80 South 8th St
Minneapolis, MN 55402
Telephone: 612.341.0400
brian.gudmundson@zimmreed.com

s/ Karen Hanson Riebel
Karen Hanson Riebel
(admitted pro hac vice)
**LOCKRIDGE GRINDAL NAUEN
P.L.L.P.**
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
khriebel@locklaw.com

James J. Pizzirusso
(admitted pro hac vice)
HAUSFELD LLP
1700 K. Street, NW
Suite 650
Washington, DC 20006
Telephone: 202.540.7200
Facsimile: 202.540.7201
jpizzirusso@hausfeld.com

*Co-Lead Counsel for Plaintiffs and the
Class*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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

**Case No. 1:17-cv-514-WMR
Case No. 1:17-mi-55555-WMR**

**CONSOLIDATED FINANCIAL
INSTITUTION CASE**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR AN AWARD OF REASONABLE ATTORNEYS' FEES AND
EXPENSES AND CLASS REPRESENTATIVE SERVICE PAYMENTS**

I. INTRODUCTION

Court-appointed Settlement Class Counsel,¹ having recovered a settlement (“Settlement”)² providing monetary relief valued at \$2,987,136 for claims, \$300,000 for notice costs, and potentially an additional amount pending resolution of Visa’s breach-related assessment,³ and non-monetary relief designed to protect the payment card data Arby’s possesses, respectfully apply for an award of reasonable attorneys’ fees and reimbursement of expenses in the amount of \$2,282,864, and service

¹ This Court appointed James Pizzirusso, Karen Riebel and Brian Gudmundson as Settlement Class Counsel in its Order Preliminary Approving Class Action Settlement and Directing Notice to Settlement Class, Mar. 5, 2020. (ECF No. 295 ¶ 3.)

² Unless otherwise defined herein, all capitalized terms shall have the meanings assigned to them in the Settlement Agreement, which was filed as an exhibit to the Unopposed Motion for Preliminary Approval. (ECF No. 239-3.) The Settlement Agreement if referenced as “(SA ¶¶_)” and attached as Exhibit A.

³ Visa’s assessment is valued at \$16,458,245.73. (SA ¶¶ 1.34, 1.35, 1.60, 5.5.). As part of the Settlement, Arby’s agreed not to prevent distribution of that amount. On May 19, 2020, Visa, Inc. filed an *amicus curiae* brief contesting that this was a meaningful benefit as Arby’s had filed a third-party complaint against Visa in *Banc of America Merchant Services, LLC v. Arby’s Restaurants Group, Inc.*, No. 20-CVS-426 (N.C. Super. Ct., Mecklenburg Cty) arguing the Assessment is unlawful and should be returned to Arby’s. (ECF No. 494-1.) The parties filed respective responses (Plaintiffs at ECF No. 500, Defendant at ECF No. 501) disputing Visa’s assertions. Plaintiffs continue to assert that the Settlement provision requiring Arby’s to forego its right to prevent distribution of the Visa settlement to the Class is a substantial benefit. Nevertheless, the Settlement cannot *guarantee* this provision will drive the over \$16 million Visa assessment to the Class because it requires Visa to abide by its program rules, which it has declined to do as of the filing of this motion.

payments of \$10,000 per Settlement Class Representative. Pursuant to the Settlement Agreement, the total of these awards shall not exceed \$2,312,864. (SA ¶ 7.1.) The amounts Settlement Class Counsel seek are far below the time counsel actually expended on behalf of the Plaintiffs and proposed Settlement Class.

It is important to note that Plaintiffs and Defendants (the “Parties”) did not negotiate the amounts of the attorneys’ Fees and Expenses or any Class Representative Service Awards until after all substantive terms of the Settlement had been agreed for the benefit of the Settlement Class. (SA ¶ 7.1; Declaration of Karen H. Riebel (“Riebel”), which is attached hereto as Ex. B, ¶ 11.) After extensive, additional arm’s length negotiations, the Settling Parties arrived at the amounts for Attorneys’ Fees and Service Awards. These awards will not affect the amount Defendant will pay to satisfy the approved Settlement Class claims and implement the non-monetary benefits. (SA ¶ 7.3; Riebel ¶ 11.) The Attorneys’ Fees, Expenses, and Service Awards requested are reasonable and represent a substantial discount to the fees and expenses incurred by Plaintiffs’ counsel. (Riebel ¶¶ 13-15.) They were the product of extensive arm’s length negotiation separate and apart from the negotiation of the Settlement for the Class. (Riebel ¶ 11.) Similarly, the Service Awards of \$10,000 that the Parties negotiated for each Settlement Class

Representative are reasonable and appropriate based on the law and their extensive service to the case. Both awards should be approved as reasonable.

II. BENEFITS OF THE SETTLEMENT

The Settlement provides monetary relief for: “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.” (SA ¶ 3.1.)

The Settlement requires Arby’s’ to pay up to \$1,547,248 to Settlement Class Members with respect to their Assessed Payment Card Accounts⁴ and up to \$1,439,888 to Settlement Class Members with respect to their Non-Assessed Payment Card Accounts.⁵ (SA ¶¶ 1.33, 1.34, 5.3.1.) Members may submit a claim for either or both types of payments. (SA ¶ 5.3.1.) Also, the Settlement provides the Settlement Class Members substantial injunctive relief, requiring Arby’s to establish, implement and maintain a Comprehensive Information Security Program designed to protect the security, integrity and confidentiality of payment card data

⁴ An Assessed Payment Card Account refers to an account affected by the Arby’s Data Breach for which Visa and/or MasterCard has already issued an assessment. An assessment is compensation Visa or MasterCard has already required Arby’s to pay the Settlement Class Member with respect to that Assessed Payment Account. (Riebel Decl. ¶ 8.)

⁵ A Non-Assessed Payment Card Account refers to an account affected by the Data Breach for which Visa and/or MasterCard has not paid an assessment to the Settlement Class Member. (Riebel Decl. ¶ 10.)

Arby's collects or receives. (SA ¶ 5.6.) The Settlement further provides that Arby's must pay the costs of Notice to the Class and Settlement Administration, an additional Class benefit valued at \$300,000. (SA ¶¶ 1.17, 5.3.2; Riebel ¶ 12.)

Rather than establishing a settlement fund, the Settlement requires Arby's to pay the Settlement Administrator an amount based on the Valid Claims forms submitted to the Settlement Administrator, who in turn distributes those funds to Settlement Class Members. (SA ¶ 5.3.1.)

The Settlement also expressly provides that Arby's will pay for Attorneys' Fees, Expenses, and Service Awards separately from the value provided to the class for the settlement, and the awards do not come from a common fund. (SA ¶¶ 5.3.1, 5.3.3, 7.1.) Arby's has agreed not to contest Plaintiffs' application for Attorneys' Fees, Expenses, and Service awards so long as Plaintiffs seek no more than \$2,312,864 to cover "(i) any Court-approved Service Payments to the Settlement Class Representatives, not to exceed \$10,000 per Settlement Class Representative; and (ii) any Court-approved attorneys' fees, costs, and expenses of Settlement Class Counsel, not to exceed \$2,300,000." (SA ¶ 7.2.)

Settlement Class counsel achieved this settlement as the result of extensive arm'slength negotiations with the help of a respected mediator. (Riebel ¶ 6.) On June 10, 2019, the parties filed a joint motion to stay for ninety days to explore

settlement (ECF No. 476), and on June 11, 2019, the Court issued an order granting the parties' motion. (ECF No. 284.) On September 5, 2019, the parties attended a mediation conducted by Hunter R. Hughes, III, an experienced mediator who has mediated numerous class actions, including class actions involving Home Depot, Publix, and the Coca-Cola Company. Despite being unable to achieve settlement during this mediation, the parties made progress, and filed a joint motion to extend the stay for forty-five days on September 13, 2019 (ECF No. 482) to determine if they could reach an agreement, which the Court granted on September 16, 2019. (ECF No. 286; *see* Riebel ¶ 6.) Settlement Class Counsel continued to engage in arm's length negotiations during this forty-five day period, and in November 2019, reached a tentative settlement. (Riebel ¶ 6.)

In both negotiating and finalizing the Settlement, Settlement Class Counsel worked tirelessly to achieve beneficial terms for the Settlement Class Members. Settlement Class Counsel secured settlement amounts for issuers of two distinct types of payment card accounts and achieved injunctive relief ensuring Arby's would implement robust security measures to prevent a similar data breach from occurring again. (SA ¶¶ 1.33, 1.34, 5.3.1, 5.6.1; *see* Riebel ¶¶ 7-10.) Because these results are substantial, Settlement Class Counsel are requesting an Attorneys' Fee

award that is reasonable in light of the time and expenses spent litigating this case on the Settlement Class Members' behalf.

III. ARGUMENT

A. The Requested Attorneys' Fees Award Is Appropriate Under the Reasonable Percentage of the Fund Method.

Plaintiffs seek an award of \$1,872,934.44 in attorneys' fees (in addition to \$409,929.56 in expenses, discussed separately below), an award that was agreed upon by the parties as a result of arm's length negotiations after reaching agreement on the substantive relief to class members. (SA ¶¶ 1.34, 1.35, 1.60, 5.5.) Because the fees are to be paid separately by Arby's, the relief to the class will not be reduced and the class will not be impacted by the amount this Court awards.

District courts have "wide discretion" in exercising judgment on appropriate fee amounts, though courts must articulate the decision made, give principled reasons in support, and show the specific fee calculations. *Norman v. Housing Auth. Of Montgomery*, 836 F.2d 1292, 1304 (11th Cir. 1988). "Courts generally analyze the reasonableness of attorneys' fees using one of two approaches. Where class action settlements involve a common fund, courts typically base an award of attorneys' fees on the percentage of the common benefit recovered." *See In re Arby's Rest. Grp., Inc. Data Sec. Litig.*, 2019 WL 2720818, at *2 (N.D. Ga. June 6, 2019) ("*Arby's Consumer Litig.*") (citing *Camden I Condo. Ass'n v. Dunkle*, 946 F. 2d 768,

774 (11th Cir. 1991)); *see also Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 696 (N.D. Ga. 2001) (fee supported by percentage of common fund approach also fair and reasonable under lodestar approach).

Here, adding the “requested fee, litigation expenses, and costs of administration to the . . . aggregate cap for claims,” the value of the settlement (not including individual class representative service awards) is at least \$5,570,000: a claims-made pot worth up to \$2,987,136; \$300,000 for notice costs; \$409,929.56 in expenses; and Attorneys’ Fees of \$1,872,934.44. (SA ¶¶ 1.17, 1.33, 1.34, 5.32, 7.1.) (Riebel ¶¶ 12, 15, 17). *See Arby’s Consumer Litig.*, 2019 WL 2720818, at *2 (citing *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 354 (N.D. Ga. 1993) (performing similar calculation). In addition, the Settlement includes two important components whose value is difficult to assess: 1) injunctive relief by Arby’s for the class; and 2) Arby’s agreement not to prevent distribution of the Visa’s assessment, which is valued at \$16,458,245.73. (SA ¶¶ 1.60, 5.5, 5.6.). Using only the value of the monetary component of the Settlement, the \$1,872,934.44 Attorneys’ Fees being sought are, at best, 33% of the total potential cash recovery. If a value were placed on the other relief afforded by the Settlement, this percentage would be even lower. This is consistent with the fees and expenses requested in the Arby’s consumer action, which this Court found reasonable. *See Arby’s Consumer Litig.*, 2019 WL

2720818, at *2 (collecting cases finding 33% reasonable).

B. The Requested Attorneys' Fees and Expenses Award Is Reasonable Under the Johnson Factors.

When evaluating a request for attorneys' fees, district courts in the Eleventh Circuit analyze the twelve factors announced in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974),⁶ to determine the appropriateness of the requested fee amount. *Dikeman v. Progressive Exp. Ins. Co.*, 312 Fed. Appx. 168, 172 (11th Cir. 2008) ("Whether the district court uses the lodestar or the common-fund method, the district court should apply the twelve factors listed in *Johnson v. Georgia Highway Express, Inc.*"); see also *Arby's Consumer Litig.*, 2019 WL 2720818, at *3 (N.D. Ga. June 6, 2019) (explaining that under either the percentage of the common fund or the lodestar approach, courts in the Eleventh Circuit apply the *Johnson* factors, as articulated in *Camden I Condo Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991), to determine whether attorneys' fees are reasonable). These factors consist of: (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations

⁶ See *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*) (adopting as precedent all Fifth Circuit decisions prior to Oct. 1, 1981).

imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) whether the case is undesirable; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.3d at 717-718. The application of these factors further demonstrates that the Attorneys' Fees and Expenses requested here are reasonable and should be approved.

1. The Time and Labor Expended By Plaintiffs' Attorneys Support the Requested Fee.

The first *Johnson* factor requires the Court to consider the time and labor spent on the case. *See Johnson*, 488 F.2d at 717. As mentioned above, Settlement Class Counsel litigated this case for over three years, investing time and labor far in excess of the Attorneys' Fees they request in connection with this Settlement. (Riebel ¶¶ 5, 6, 14.) They briefed and prevailed on a Motion to Dismiss, served and responded to extensive discovery requests (several of which were contested and litigated); deposed several Arby's employees, former employees, and third parties; coordinated document collections and productions, and defended the depositions of each named Plaintiff; briefed a variety of discovery disputes, retained experts, prepared expert reports, and worked extensively to brief class certification to the virtual eve of filing. (Riebel ¶¶ 5, 6, 13; *see generally* SA.) Indeed, Plaintiffs' attorneys expended more than 17,000 hours on this case; the 12,000 hours included herein resulted in a

lodestar of more than \$6,000,000.00 - well over the requested fee award. Therefore, the \$1,872,934.44 requested amount to cover Attorneys' Fees represents a steep discount and the first *Johnson* factor, the time and labor expended by the Plaintiffs' Attorneys, more than supports the requested award for Attorneys' Fees and Expenses. (*Id.* at ¶ 14-15.)

After vigorously litigating the case, Settlement Class Counsel negotiated a hard-fought settlement on behalf of the Settlement Class Members, which includes: "All United States-based issuers of Visa and MasterCard payment card that issued at least one Alerted-On Payment Card and do not validly request exclusion from the Settlement Class." (SA ¶ 3.1.) In doing so, Settlement Class Counsel obtained monetary relief for Non-Assessed Payment Card Accounts and Assessed Payment Card Accounts, while securing robust injunctive relief ensuring the Settlement Class Members do not undergo a similar breach in the future. Settlement Class Counsel then briefed the Motion for Preliminary Approval of the Settlement. The work Settlement Class Counsel have performed is reasonable and justified in light of the complexity and nuance of this case, and therefore their requested fee award is warranted.

2. The Novelty and Difficulty of the Legal and Factual Issues Support the Requested Fee.

The second *Johnson* factor the Court must consider in evaluating a fee award is the novelty and difficulty of the claims raised in the case. *See Johnson*, 488 F.2d at 718. Data breach litigation is a relatively new subject matter in class action litigation and the law involves many conflicts among different circuit courts and there are many issues still to be decided in the first instance. *See In re Arby's Consumer Litig.*, 2019 WL 2720818, at *3 (“Consumer class action litigation is complex and difficult to prosecute . . . [and] data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits.”). Here, Settlement Class Counsel faced a plethora of complex legal questions, including: whether Arby’s had a common law duty to safeguard personal information; whether Arby’s failure to implement adequate security measures constituted a negligent act; whether Section 5 of the FTC Act could sustain a claim for negligence per se claim; whether Arby’s inadequate data security measures resulted in the data breach; and whether the economic loss doctrine applied to preclude Plaintiffs’ negligence claims. They also faced perhaps the most complex question of them all – whether a class may be certified. Settlement Class Counsel also confronted difficult factual questions, such as determining the number of payment cards impacted by the breach and the methods hackers used to bypass

Arby's security measures and install malicious software. Then, during settlement negotiations, Settlement Class Counsel needed to devise a novel method for compensating payment-card issuers in arguably differing positions vis a vis card brand assessments and other factors.

The second *Johnson* factor – the novelty and difficulty of the legal and factual issues – supports the requested award of Attorneys' Fees.

3. This Case Required a High Level of Skill.

The third *Johnson* factor asks the Court to examine the skill requisite to perform the legal service needed in the case. *See Johnson*, 488 F.2d at 718. Settlement Class Counsel have extensive experience in complex class action litigation. (Riebel ¶¶ 2-4.) Co-Lead Counsel Karen H. Riebel is a partner at Lockridge Grindal Nauen P.L.L.P. ("LGN") where she has concentrated her practice in the areas of data breach, antitrust and securities class action litigation since joining LGN in 1992. (Riebel ¶ 2.) She has been appointed Co-Lead Counsel or Liaison Counsel in four data breach class actions and has served on the Executive Committees for seven others. (*Id.*) She has also worked on numerous securities and antitrust class actions and LGN has served as lead or co-lead counsel in many complex cases across the country. (*Id.*)

Co-Lead Counsel James J. Pizzirusso is a partner at Hausfeld LLP with a where he serves as Chair of the Cybersecurity/Privacy Law and Consumer Protection Practice Groups. He has served as Co-Lead Counsel in three data breach class actions and has served on Executive/Steering Committees in six others. He has also served as Lead Counsel or on Steering Committees in numerous other class action cases. (Riebel ¶ 3.)

Finally, Co-Lead Counsel Brian Gudmundson is a partner at Zimmerman Reed, LLP, focusing his practice on data breach, consumer, antitrust, securities, intellectual property, and sports litigation. He has served as Co-Lead Counsel in two data breach class actions, has served on Executive/Steering Committees in six others, and served in a leadership capacity in numerous other consumer, sports, and antitrust matters. (Riebel ¶ 4.)

Settlement Class Counsel utilized their extensive experience to achieve a favorable result for the Settlement Class Members in this case. For over three years, they litigated complex legal and factual issues and negotiated a nuanced settlement agreement that achieved substantial monetary remedies and comprehensive injunctive relief for Settlement Class Members. Moreover, using their skill and expertise, Settlement Class Counsel achieved these results while navigating contentious mediation and laborious settlement negotiations. Accordingly, the third

Johnson factor – the skill requisite to perform the legal service – supports the requested award of Attorneys’ Fees.

4. Plaintiffs’ Attorneys Were Precluded From Other Employment by the Acceptance of this Case.

The fourth *Johnson* factor – the preclusion of other employment by the Plaintiffs’ Attorneys due to acceptance of the case – is closely related to *Johnson* factors 1 (the time and labor involved) and 3 (the legal skill and experience required.) Indeed, spending more than 17,000 hours litigating and settling this case precluded all Plaintiffs’ counsel from engaging in other cases. (Riebel ¶ 18.) The fourth *Johnson* factor thus supports the requested award of Attorneys’ Fees.

5. The Customary Fee

The fifth *Johnson* factor requires the Court to consider the customary fee for similar work in the community. *Johnson*, 488 F.2d at 718. As shown above, the requested award of Attorneys’ Fees and Expenses is a fraction of the lodestar of time spent multiplied by hourly rates plus actual expenses. As described above, the requested fee award of \$1,872,934.44 for fees is appropriate in light of the result achieved for the Class. In addition, because it represents only 27.57% of Plaintiffs’ Counsel’s total lodestar, it necessarily reflects the reasonable hours spent litigating this case and a reasonable hourly rate commensurate with the ordinary market billing rates for attorneys in class action data breach cases. (Riebel ¶ 14.) *See, e.g., Rivas v.*

BG Retail, LLC, 2020 WL 264401, at *8 (N.D. Cal. Jan. 16, 2020) (“A negative multiplier ‘suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by class counsel.’”) (citation omitted); *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 389 (E.D. Pa. 2019) (A negative multiplier of .195 “suggests that Plaintiffs’ fee request is reasonable.”).

Moreover, in terms of lodestar percentage, the requested Attorneys’ Fees award here is significantly smaller than the Attorneys’ Fees award granted in the consumer action related to this matter, *In re Arby’s Consumer Litig.*, 2019 WL 2720818. There, the Consumer Plaintiffs’ lodestar totaled \$1,889,024.30 and their requested Attorneys’ Fee award was \$980,000. *Id.* at *2-3. The Court granted their request for Attorneys’ Fees, explaining, in part, that because the requested attorneys’ fees represented approximately half the lodestar, the fee amount was reasonable. *Id.* Here, an even larger difference exists between Settlement Class Counsel’s adjusted lodestar of \$6,792,553.00 and their requested Attorneys’ Fee award of \$1,872,934.44. While the fee award in the consumer action represented 52% of the lodestar, the requested award here represents only 27.57%. As such, Settlement Class Counsel’s request for attorneys’ fees is exceptionally reasonable in light of

similar work in the community, and therefore the fifth *Johnson* factor supports the requested Attorneys' Fees award.

6. Whether the Fee is Fixed or Contingent.

This action, like most class action lawsuits, was prosecuted on a contingent basis because virtually no individual plaintiff possesses a sufficiently large stake in the litigation to justify paying attorneys on an hourly basis. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2012 WL 12540344, at *4-5 (N.D. Ga. Oct. 26, 2012). Determining a fair fee must include consideration of the contingent nature of the fee and the significant risks of non-recovery. "A contingency fee arrangement often justifies an increase in the award of attorney's fees." *Lunsford v. Woodforest Nat'l Bank*, 2014 WL 12740375, at *15 (N.D. Ga. May 19, 2014) (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988)). This is because:

from a pure dollars-and-cents economic view, this higher fee is the appropriate measure of a reasonable fee that is required in the marketplace of services: (1) to induce an attorney to agree to assume the risk that no compensation will be received unless she or he successfully achieves a benefit for the client; and (2) if ultimately successful, to compensate for the costs suffered and investment income forgone by delay in payment.

H. Newberg and A. Conte, 1 *Attorney Fee Awards* § 1.8 (3d. ed.); *see, e.g., In re Friedman's, Inc. Sec. Litig.*, 2009 WL 1456698, at *3 (N.D. Ga. May 22, 2009).

Therefore, the sixth *Johnson* factor supports approval of the request.

7. Time Limitations Imposed By the Client or Other Circumstances.

The seventh *Johnson* factor suggests the court enhance a fee award by adding a premium in the event new counsel is called to handle an appeal or at a late stage in the proceedings. *See Johnson*, 488 F.2d at 718. Here, the facts do not present this issue, so this factor does not affect the analysis of the proposed award.

8. The Amount Involved and the Results Obtained Support the Requested Fee.

The analysis of the eighth *Johnson* factor – the amount involved and the results obtained – relates to *Johnson* factors 1, 2, 3 and 5 above. Experienced attorneys spent over 17,000 hours and spent approximately \$409,929.56 in expenses to litigate a complex matter on behalf of the Settlement Class. (Riebel ¶¶ 14-15.) The time and effort materialized in a favorable settlement for the Settlement Class Members; those who file claims can recover for both their assessed and non-assessed cards while benefiting from robust security measures ensuring they do not experience a similar data breach in the future. As such, the eighth *Johnson* factor supports the award requested.

9. The Experience, Reputation, and Ability of the Attorneys Support the Requested Fee.

The ninth *Johnson* factor – the experience, reputation, and ability of the attorneys – is illustrated by the analysis of the third *Johnson* factor, above. Indeed,

Plaintiffs' legal team includes many of the nation's preeminent class action law firms and specifically consists of attorneys who have served as lead counsel in many major data breach cases. (Riebel ¶¶ 2-4.) Additionally, Judge Totenberg of this Court evaluated Settlement Class Counsel previously in this litigation when she appointed them Co-Lead Counsel (ECF No. 53), and this Court did so again when it preliminarily approved the Settlement and appointed them Settlement Class Counsel. (ECF No. 295.) The experience, reputation, and ability of the attorneys support the proposed award of Attorneys' Fees and Expenses.

10. This Case Presented Difficult Issues and a Risk of No Recovery, and thus Meets the "Undesirability" Factor.

This case was complex; it contained difficult issues and presented a risk that Plaintiffs would forego recovery. When they took the case, Settlement Class Counsel understood they would have to spend substantial time and money and face significant risks without any assurance of compensation. (Riebel ¶ 18.) These risks must be assessed as they existed at the time counsel undertook the case. *See, e.g., In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1364 (S.D. Fla. 2011). The tenth *Johnson* factor supports this application.

11. The Nature and Length of the Professional Relationship with the Client Supports the Requested Fee.

The eleventh *Johnson* factor – the nature and length of the professional relationship with the client – supports the requested fee. The relationship between a class action plaintiff and counsel does not typically lead to repeat business or ongoing retainers, unlike relationships where counsel represents a business entity or a wealthy client. Moreover, because a class action case almost always involves a small amount at stake per individual client brought on a contingency basis, the professional relationship is less valuable as a whole. Accordingly, the eleventh *Johnson* factor supports the requested fee amount here, as this case is a class action brought on a contingency basis with single action representation.

12. Awards in Similar Cases Support the Requested Fee.

The twelfth *Johnson* factor – awards in similar cases – has been analyzed under the fifth and sixth *Johnson* factors above. The requested fee is in line with awards in other class actions. Indeed, as this Court found in approving the settlement in the consumer track, percentage-based fee awards in the Eleventh Circuit have averaged around 33% of the class benefit. *See, e.g., Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (noting that fees in this Circuit are “roughly one-third”); T. Eisenberg, et al., *Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Rev. 937, 951 (2017) (median fee from 2009-2013 was 33%).

Moreover, other cases establish that under the percentage approach, “courts compensate class counsel for their work in extracting non-cash relief from the defendant.” *In re Checking*, 2013 WL 11319244, at *12 (S.D. Fla. Aug. 2, 2013). If the non-cash relief is hard to value, as here, it justifies a higher percentage than would otherwise be appropriate. *See, e.g., Camden I*, 946 F.2d at 774; *see generally In re the Home Depot, Inc., Cust. Data Sec. Breach Litig.*, 2016 WL 6902351, at *4 (two years of enhanced cybersecurity measures was a valuable class benefit). These cases support a higher percentage fee in his case.

Thus, all relevant *Johnson* factors support the application for an award of \$2,312,864 for Attorneys’ Fees, Expenses, and Service Awards.

C. The Requested Attorneys’ Fees Award Is Reasonable Under the Lodestar Method.

The reasonableness of the requested fee under the percentage approach is supported by a lodestar cross-check. Indeed, under a lodestar approach, class counsel would be entitled to roughly three times the fee requested here.⁷

⁷ While the rule in the Eleventh Circuit is that fees in a common benefit case such as this one are calculated using the percentage method, under some circumstances it might be appropriate to use the lodestar method in the first instance, not just as a cross-check, such as when the Plaintiffs’ underlying claims involve fee-shifting statutes or the settlement provides benefits that are difficult to measure. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (affirming district court decision to use lodestar award when attorneys’ fees were paid

The hourly rates and hours all Plaintiffs' counsel spent on the case were reasonable, and represent a lodestar substantially higher than the award Settlement Class Counsel seek here. *Accord Arby's Consumer Litig.*, 2019 WL 2720818, at *3 (noting that the fact that the "amount of attorneys' fees requested by Class Counsel represent approximately half" the lodestar strongly supported reasonableness: "This fact, standing alone, strongly suggests that the amount of fees requested here are reasonable and fair.").

First, the hourly rates documented in the Declaration of Karen H. Riebel are generally consistent with market billing rates for attorneys in class action data breach cases, and are thus reasonable. (Riebel ¶ 14); *Carr v. Ocwen Loan Servicing, LLC*, 2014 WL 12860083, at *11 (N.D. Ga. Apr. 25, 2014) ("A reasonable hourly rate must reflect rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.") (internal citations and quotations omitted). Here, Settlement Class Counsel evaluated the hourly rates of plaintiffs' attorneys in recent data breach class actions venued in the United States District Court for the Northern District of Georgia. The ranges of hourly rates by

separately from amounts allocated to class and "settlement value's upper bound" was "difficult to estimate"). For example, this Court used the lodestar approach in the first instance in the consumer track of the *Home Depot* data breach litigation. *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 11299474, at *1 (N.D. Ga. Aug. 23, 2016).

attorneys in each of those cases are as follows: *In re Home Depot Customer Data Security Breach Litig.*, 1:14-md-02583-TWT, Doc. No. 227-1 (filed June 27, 2016) (rates ranging from \$350 to \$750); *Arby's Consumer Litig.*, No. 1:17-cv-01035-WMR, Doc. Nos. 188-2, 188-3, 188-4, 188-5 (filed May 7, 2019) (rates ranging from \$350 to \$950); *In re Equifax Customer Data Security Breach Litig.*, No. 1:17-md-02800-TWT, Doc. No. 858-1 (filed Oct. 29, 2019) (rates ranging from \$212.50 to \$1,050.00). Here, the hourly rate for attorneys ranges from \$150 to \$1,150, and is therefore consistent with the rates of attorneys in similar cases. (Riebel ¶ 14.)

Second, and as further discussed previously, Settlement Class Counsel performed *extensive* work litigating this case for over three years, devoting more than 17,700 hours to the case.⁸ Settlement Class Counsel request that the Court award only a portion of their \$6,792,553.00 adjusted lodestar and their \$409,929.56 in expenses. (Riebel ¶¶ 14-16.)⁹ In fact, subtracting expenses and Class

⁸ The figure being used in this analysis, 12,001.47 hours, does not reflect approximately 5,741 hours (approximate lodestar of \$1,722,300.00) spent by attorneys on document review and coding because Plaintiffs' vendor lost a significant chunk of their work product while the case was stayed for mediation. (Riebel Decl. ¶ 16.) The vendor agreed to compensate Class Counsel \$125,000 for some a portion of the time lost and Plaintiffs do not seek to justify their award here with those same hours. Thus, those document review hours are excluded from this Petition.

⁹ Detailed time reports showing these lodestar and expense number are available for *in camera* inspection at the Court's request. (Riebel Decl. ¶ 15.)

Representative Service Awards from the \$2,312,864 requested yields a fee request of \$1,872,934.44, which is only 27.57% of counsel's total adjusted lodestar (22% if all time were included). (Riebel ¶¶ 14-16.) The requested \$2,282,864 for Attorneys' Fees and Expenses is appropriate and should be approved. (*See* Riebel ¶ 14.)

D. The Expenses Submitted as Part of the Attorneys' Fees and Expenses Request Is Reasonable.

The Settling Parties negotiated the Attorneys' Fees, Expenses and Class Representative Service Awards together as one sum equaling \$2,312,864. (Riebel ¶ 11.) As explained above, the expenses that Settlement Class Counsel incurred through the duration of this case was \$409,929.56. (Riebel ¶¶ 15, 17.) Settlement Class Counsel provide this Section to demonstrate that the expenses were reasonably expended and should be approved as a reasonable subset of the Attorneys' Fees and Expenses award. Arby's does not object. (SA ¶ 7.2.)

Expenses incurred in furtherance of the claims of a class are properly recovered by counsel. *See, e.g., Dowdell v. Apopka*, 698 F.2d 1181, 1192 (11th Cir. 1983) ("all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement" may be recovered); *Yule v. Jones*, 766 F. Supp. 2d 1333, 1344 (N.D. Ga. 2010) (same).

The categories of expenses Settlement Class Counsel request were necessarily incurred in litigation and routinely charged to hourly clients, and therefore are due

to be reimbursed. (Riebel ¶ 16.) The expenses included are litigation assessment, court costs, experts/consultants, hearing transcripts, investigation, Lexis/Westlaw, messenger/delivery, in house and outside photocopies, postage, service of process, special supplies, telephone/telecopier, travel and other costs. (*Id.* ¶ 17.)

E. The Requested Service Payments for Settlement Class Representatives Are Appropriate and Reasonable.

“[I]ncentive awards are appropriate to recognize the efforts of the representative plaintiffs to obtain recovery for the class.” *In re Domestic Air Transp.*, 148 F.R.D. at 358. Indeed, “[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (internal quotations and citation omitted). “Incentive payments . . . are intended to recognize the time and efforts [the representatives] spent on behalf of the Class Members.” *Faught v. Am. Home Shield Corp.*, 2010 WL 10959222 at *6 (N.D. Ala. 2010).

Plaintiffs do not serve as class representatives to earn a profit. It is appropriate, however, to award class representatives in recognition of their services during successful class litigation. An “incentive award requested is justified in light of Plaintiffs’ willingness to devote their time and energy to prosecuting a representative action . . . and is reasonable in consideration of the overall benefit conferred to

Settlement Class Members.” *Parsons v. Brighthouse Networks*, 2015 WL 13629647, at *15 (N.D. Ala. Feb. 5, 2015).

Here, the services provided by the Settlement Class Representatives warrant financial recognition. Indeed, the action has lasted over three years and Settlement Class Representatives worked diligently to represent the best interests of their fellow financial institutions. They spent countless hours and endured interruption to their businesses responding to discovery, locating and producing documents, sitting for depositions, advising counsel, and being involved in prosecuting a complex civil case on behalf of financial institutions throughout the country. Thus, the request for a \$10,000 Service Payment per Settlement Class Representative is appropriate and reasonable. *See Allapattah Services, Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1219 (S.D. Fla. 2006) (citing numerous cases in which awards of \$25,000, \$20,000 and \$10,000 were approved). Settlement Class Counsel requests that the Court approve service awards of \$10,000 to each of the three Settlement Class Representatives.

IV. CONCLUSION

The Settlement of this Action resulted from the extensive work and litigation by Settlement Class Counsel. Settlement Class Counsel respectfully requests that the Court approve this application in full.

Respectfully Submitted,

Dated: May 28, 2020

/s/Kenneth S. Canfield

Kenneth S. Canfield

Ga. Bar No. 107744

**DOFFERMYRE SHIELDS CANFIELD
& KNOWLS, LLC**

1355 Peachtree St., NE, Suite 1900

Atlanta, GA 30309

Telephone: (404) 881-8900

Facsimile: (404) 920-3246

kcanfield@dsckd.com

Liaison Counsel for Plaintiffs and the Class

/s/ Karen H. Riebel

Karen Hanson Riebel

(admitted pro hac vice)

**LOCKRIDGE GRINDAL NAUEN
P.L.L.P.**

100 Washington Ave. S., Suite 2200

Minneapolis, MN 55401

Telephone: (612) 339-6900

khriebel@locklaw.com

/s/Brian C. Gudmundson

Brian C. Gudmundson

(admitted pro hac vice)

ZIMMERMAN REED LLP

1100 IDS Center, 80 South 8th Street.

Minneapolis, MN 55402

Telephone: (612) 341-0400

brian.gudmundson@zimmreed.com

/s/James J. Pizzirusso

James J. Pizzirusso
(admitted pro hac vice)

HAUSFELD LLP

1700 K. Street, NW

Suite 650

Washington, DC 20006

Telephone: (202) 540-7200

Facsimile: (202) 540-7201

*Co-Lead Counsel for Plaintiffs and the
Class*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record on this 28th day of May, 2020.

/s/ Karen H. Riebel

Karen Hanson Riebel
(admitted pro hac vice)

**LOCKRIDGE GRINDAL NAUEN
P.L.L.P.**

100 Washington Ave. S., Suite 2200

Minneapolis, MN 55401

Telephone: (612) 339-6900

khriebel@locklaw.com

CERTIFICATION

The Undersigned hereby certifies, pursuant to Local Civil Rule 7.1D, that the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Civil Rule 5.1C.

/s/ Karen H. Riebel

Karen Hanson Riebel

(admitted pro hac vice)

LOCKRIDGE GRINDAL NAUEN

P.L.L.P.

100 Washington Ave. S., Suite 2200

Minneapolis, MN 55401

Telephone: (612) 339-6900

khriebel@locklaw.com

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of February 10, 2020, by and among the following parties, as hereinafter defined: (a) the Settlement Class Representatives, on behalf of themselves and the Settlement Class Members, by and through Settlement Class Counsel; and (b) Arby's Restaurant Group, Inc. ("Arby's"), by and through its undersigned counsel.

RECITALS

WHEREAS, in February 2017, Arby's announced the Intrusion;

WHEREAS, the Settlement Class Representatives have alleged common-law claims for negligence and negligence per se and seek monetary, injunctive, and declaratory relief based upon Arby's allegedly inadequate data security in connection with the Intrusion;

WHEREAS, financial institutions including the Settlement Class Representatives filed the Financial Institutions Plaintiffs' Consolidated Class Action Complaint on May 19, 2017; Arby's moved to dismiss the Financial Institutions Plaintiffs' Consolidated Class Action Complaint on June 19, 2017; and by Order dated March 5, 2018, the Court denied Arby's motion;

WHEREAS, the Plaintiffs filed the Financial Institutions Complaint on August 3, 2018;

WHEREAS, the Plaintiffs and Arby's exchanged an extensive amount of discovery in the Action; Settlement Class Counsel served twenty-two subpoenas or notices of deposition; Settlement Class Counsel took twelve depositions of Arby's employees, former Arby's employees, and third parties; Arby's took depositions or obtained declarations from each of the Plaintiffs and twelve absent putative class members; Settlement Class Counsel reviewed tens of thousands of electronic files collected from Plaintiffs, and produced over 20,589 pages of documents to counsel for Arby's; and Settlement Class Counsel reviewed over 112,000 documents produced by Arby's;

WHEREAS, Settlement Class Counsel retained expert witnesses to prepare reports in support of the Motion for Class Certification that Settlement Class Counsel were preparing at the time the Parties agreed to settle the Action;

WHEREAS, Visa issued alerts relating to the Intrusion in the series US-2017-0057;

WHEREAS, MasterCard issued alerts relating to the Intrusion in the series ADC002618;

WHEREAS, Visa and MasterCard each ultimately concluded that approximately seventy-eight percent (78%) of its issuers' portion of the Alerted-On Payment Card Accounts were at risk of compromise as a result of the Intrusion (collectively, 5,555,094 of the 7,106,112 Alerted-On Payment Card Accounts found to have been at risk);

WHEREAS, Arby's denies (a) the material allegations of, and all liability with respect to any and all facts and claims alleged in, the Financial Institutions Complaint, (b) that the Settlement Class Representatives and the Class Members have suffered the damages they allege, and (c) that the Financial Institutions Complaint satisfies the requirements for the Action to be certified as a class action under Federal Rule of Civil Procedure 23;

WHEREAS, the Settlement Class Representatives assert (a) that there is sufficient evidence to support their claims, (b) that there is sufficient evidence that the Settlement Class Representatives and the Class Members have suffered the damages they allege, and (c) that the Financial Institutions Complaint and the evidence amassed in the case demonstrate that the claims asserted in the Financial Institutions Complaint would properly be resolved through class action proceedings, including trial, pursuant to Federal Rule of Civil Procedure 23;

WHEREAS, despite their belief that their claims are meritorious, that they and the Class Members have been injured and suffered damages, and that the Financial Institutions Complaint satisfies the requirements for the Action to be certified as a class action under Federal Rule of Civil Procedure 23, the Settlement Class Representatives and Settlement Class Counsel have concluded, after discovery and investigation of the facts and after carefully considering the circumstances of the Financial Institutions Complaint, that it would be in the best interests of the Class Members to enter into this Agreement, which interests include the substantial value to be derived by this Settlement and the interest in avoiding the uncertainties of litigation and assuring that the benefits reflected herein are available to the Class Members;

WHEREAS, despite its belief that it has valid and complete defenses to the claims asserted against it in the Financial Institutions Complaint, Arby's has nevertheless agreed to enter into this Agreement to settle the Action in order to avoid further burdensome and protracted litigation and thereby reduce the expense, inconvenience, and distraction being incurred by Arby's by reason of the Action;

WHEREAS, the Settlement set forth in this Agreement is a product of sustained, arm's length negotiations conducted in substantial part in mediation overseen by Hunter R. Hughes III;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and without (a) any admission or concession on the part of the Settlement Class Representatives or Settlement Class Counsel of the lack of merit of the Financial Institutions Complaint or (b) any admission or concession by Arby's of liability or wrongdoing or the merit of any of the claims in or the lack of merit of any defense of Arby's to the Financial Institutions Complaint,

IT IS HEREBY STIPULATED AND AGREED by the Parties that the Action and the claims set forth in the Financial Institutions Complaint be settled, compromised, and dismissed with prejudice, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the following terms and conditions:

1. **DEFINITIONS**

As used in this Agreement, the terms set forth in this section in boldface type will have the following meanings:

1.1 **Action.** The action brought on behalf of financial institutions against Arby's relating to the Intrusion entitled *In re Arby's Restaurant Group, Inc. Data Security Litigation*, No. 1:17-cv-514-WMR (N.D. Ga.).

1.2 **ADC.** MasterCard's Account Data Compromise program, as set forth in MasterCard's *Security Rules and Procedures*.

1.3 **Agreement or Settlement Agreement.** This document, including all exhibits.

1.4 **Alerted-On Payment Card.** A payment card that was identified by Visa or MasterCard in an alert in the US-2017-0057 series in the case of Visa or in an alert in the ADC002618 series in the case of MasterCard.

1.5 **Alerted-On Payment Card Account.** The payment card account associated with an Alerted-On Payment Card.

1.6 **Application.** The filing to be made by the Settlement Class Representatives containing the Fee Request and any request for an award of Service Payments.

1.7 **Arby's.** Arby's Restaurant Group, Inc.

1.8 **Arby's Counsel.** This term includes the following firms and individuals: Douglas H. Meal, Seth Harrington, and Michelle Visser of Orrick, Herrington & Sutcliffe LLP and Robert P. Remar, Joshua P. Gunneman, Austin J. Hemmer, and Cameron B. Roberts of Rogers & Hardin LLP.

1.9 **Arby's Payment.** This term shall have the meaning set forth in the Distribution Plan.

1.10 **Arby's Released Claims.** This term shall have the meaning set forth in Section 6.2.

1.11 **Arby's Released Persons.** This term shall have the meaning set forth in Section 6.1.

1.12 **Assessed Payment Card Account.** An Alerted-On Payment Card Account that is not a Non-Assessed Payment Card Account.

1.13 **Claims.** This term shall have the meaning set forth in Section 6.1.

1.14 **Claims Administration.** The processing of claim forms received from Settlement Class Members and the processing of Settlement benefits pursuant to the Distribution Plan.

1.15 **Class Members.** All United States-based issuers of Visa and MasterCard payment cards that issued at least one Alerted-On Payment Card.

1.16 **Correction Request.** This term shall have the meaning set forth in Section 4.3.3(a).

1.17 **Costs of Settlement Administration.** All actual charges of the Settlement Administrator associated with or arising from Claims Administration and the Notice Plan as set forth in Section 4.1 that are due under the agreement between Arby's and the Claims Administrator for purposes of Claims Administration and the Notice Plan.

1.18 **Court.** The United States District Court for the Northern District of Georgia.

1.19 **Distribution Plan.** The plan, substantially in the form of Exhibit 1, for claim submission by Settlement Class Members, claim validation and valuation by the Settlement Administrator, and distribution of the Arby's Payment to Settlement Class Members who submit valid claim forms.

1.20 **Effective Date.** The first date after each of the following events and conditions has occurred: (i) the Court has entered the Final Judgment; (ii) the time for any appeal, motion, or petition with regard to the Final Judgment, or to extend the time for any such appeal, motion, or petition, has expired;

and (iii) any timely appeal, motion, or petition with regard to the Final Judgment as entered (or to extend the time for any such appeal, motion, or petition) has been resolved in such a manner that does not result in any modification of the Final Judgment or its legal effect or in otherwise leaving the Final Judgment subject to an appeal, motion, or petition that could result in a modification of the Final Judgment or its legal effect, in each case other than a modification to the Final Fees Amount that does not result in the Final Fees Amount exceeding the Maximum Award.

1.21 **Fee Request.** The Settlement Class Representatives' request for an award of attorneys' fees, costs, and expenses.

1.22 **Final Approval Hearing.** The hearing held by the Court for the purpose of determining whether to (a) grant final approval of the Settlement, (b) grant the Application, and (c) enter the Final Judgment.

1.23 **Final Fees Order.** The final order on the Application, as set forth in the Final Judgment or, in the event the Final Judgment's order on the Application is not fully upheld in connection with an appeal, motion, or petition relating to the Final Judgment, in the subsequent order relating to the Application.

1.24 **Final Fees Amount.** This term shall have the meaning set forth in Section 7.1.

1.25 **Final Judgment.** A final judgment and order of dismissal with prejudice entered by the Court in the form attached as Exhibit 2 hereto with any blanks completed in accordance with Exhibit 2 hereto.

1.26 **Final Opt-Outs Report.** This term shall have the meaning set forth in Section 4.3.3(b).

1.27 **Financial Institutions Complaint.** The First Amended Consolidated Class Action Complaint filed in the Action on August 3, 2018.

1.28 **GCAR.** Visa's Global Compromised Account Recovery program as set forth in Visa's operating regulations and as administered by Visa.

1.29 **Intrusion.** The installation of malware by computer hackers on Arby's network to access the point-of-sale systems at certain Arby's locations, as announced by Arby's in February 2017.

1.30 **Mail Notice.** This term shall have the meaning set forth in Section 4.1.2.

1.31 **MasterCard Assessment.** MasterCard's final ADC Recovery assessment relating to the Intrusion, dated on or about November 1, 2018.

1.32 **Maximum Award.** This term shall have the meaning set forth in Section 7.1.

1.33 **Maximum Non-Assessed Payment Card Accounts Amount.** \$1,439,888.00. This amount was determined according to data provided in discovery indicating there are 719,944 Alerted-On Payment Card Accounts that (i) were ultimately determined by Visa or MasterCard to have been at risk of compromise as a result of the Intrusion; and (ii) were not covered by the MasterCard Assessment or the Visa Assessment. Multiplying the 719,944 accounts by \$2.00 per account results in a maximum payment of \$1,439,888.00.

1.34 **Maximum Assessed Payment Card Accounts Amount.** \$1,547,248.00. This amount was determined according to data provided in discovery indicating there are 4,835,150 Alerted-On Payment Card Accounts that (i) were ultimately determined by Visa or MasterCard to have been at risk of compromise as a result of the Intrusion; and (ii) were covered by the MasterCard Assessment or the Visa Assessment. Multiplying each of the 4,835,150 accounts by \$0.32 per account results in a maximum payment of \$1,547,248.00.

1.35 **Non-Assessed Payment Card Account.** For Visa issuers, an Alerted-On Payment Card Account that was included in a Prior Alert. For MasterCard issuers, an Alerted-On Payment Card Account that was included in a Prior Alert, was associated with a MasterCard payment card that was not EMV-enabled as of the date on which the account was used in the transaction at Arby's that resulted in the account's inclusion in an alert in the ADC002618 series, or was issued by a Settlement Class Member that failed to enroll in the MasterCard ADC program for the calendar year 2017.

1.36 **Notice Deadline.** The date by which the Settlement Administrator is required to send out Mail Notice, which shall be twenty-eight (28) days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.

1.37 **Notice Plan.** This term shall have the meaning set forth in Section 4.1.

1.38 **Notices.** The information, substantially in the form of Exhibits 4 and 5 hereto, to be provided to Settlement Class Members pursuant to the Notice Plan.

1.39 **Opt-Outs Report.** This term shall have the meaning set forth in Section 4.3.3.

1.40 **Party.** The Settlement Class Representatives or Arby's.

1.41 **Parties.** The Settlement Class Representatives and Arby's.

1.42 **Plaintiffs or Financial Institution Plaintiffs.** The original named plaintiffs in the Financial Institution Complaint.

1.43 **Plaintiff Released Claims.** This term shall have the meaning set forth in Section 6.1.

1.44 **Plaintiff Released Persons.** This term shall have the meaning set forth in Section 6.2.

1.45 **Plaintiff Releasing Persons.** This term shall have the meaning set forth in Section 6.1.

1.46 **Preliminary Approval Order.** An Order of Preliminary Approval of Settlement in the form attached as Exhibit 3 hereto with any blanks completed in accordance with Exhibit 3 hereto.

1.47 **Prior Alert.** An alert issued by Visa or MasterCard that, if it included an Alerted-On Payment Card Account, renders that Alerted-On Payment Card Account a Non-Assessed Account. For a Visa-branded Alerted-On Payment Card Account, a Prior Alert is an IC or RA alert sent by Visa between August 11, 2016 and February 7, 2017. For a MasterCard-branded Alerted-On Payment Card Account, a Prior Alert is an ADC alert sent by MasterCard between August 12, 2016 and February 8, 2017.

1.48 **Publication Notice.** This term shall have the meaning set forth in Section 4.1.3.

1.49 **Qualified Security Assessor.** This term shall have the meaning set forth in the PCI DSS Glossary of Terms, Abbreviations, and Acronyms for the term “QSA.”

1.50 **Report on Compliance.** This term shall have the meaning set forth in the PCI DSS Glossary of Terms, Abbreviations, and Acronyms for the term “ROC.”

1.51 **Service Payments.** One-time payments to the Settlement Class Representatives, through Settlement Class Counsel, as set forth in Section 7.1.

1.52 **Settlement.** The settlement embodied in this Settlement Agreement.

1.53 **Settlement Administrator.** Subject to Court approval, KCC Class Action Services LLC.

1.54 **Settlement Class.** This term shall have the meaning set forth in Section 3.1.

1.55 **Settlement Class Counsel.** This term includes the following firms and individuals: (1) Brian Gudmundson, Zimmerman Reed LLP; (2) James Pizzirusso, Hausfeld LLP; (3) Karen Hanson Riebel, Lockridge Grindal Nauen, PLLP.

1.56 **Settlement Class Members.** The entities that comprise the Settlement Class.

1.57 **Settlement Class Representatives.** Fort McClellan Credit Union, Midwest America Federal Credit Union, and Gulf Coast Bank & Trust Company.

1.58 **Settlement Website.** This term shall have the meaning set forth in Section 4.1.5.

1.59 **Valid Claim.** This term shall have the meaning set forth in the Distribution Plan.

1.60 **Visa Assessment.** Visa’s final GCAR Recovery assessment relating to the Intrusion, dated on or about November 28, 2018.

2. SETTLEMENT PROCEDURES

2.1 On or before January 8, 2020, the Settlement Class Representatives shall move the Court for entry of the Preliminary Approval Order. Arby’s shall not oppose such motion.

2.2 At the Final Approval Hearing, the Settlement Class Representatives will request that the Court enter the Final Judgment. Arby’s shall not oppose such motion. If the Court enters the Final Judgment, all Parties irrevocably waive any right to file any appeal, motion, or petition with respect to the Final Judgment.

3. THE SETTLEMENT CLASS

3.1 **Settlement Class.** For settlement purposes only, the Parties agree that the Settlement Class Representatives shall seek in their motions for preliminary approval of the Settlement and for final approval of the Settlement, and Arby’s shall not oppose, provisional and final certification of a Settlement Class in the Action pursuant to FED. R. CIV. P. 23(b)(3), 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.

3.2 For settlement purposes only, the Settlement Class Representatives shall seek, and Arby's shall not oppose, the appointment of Settlement Class Counsel as counsel for the Settlement Class and the appointment of the Settlement Class Representatives as class representatives for the Settlement Class.

3.3 If the Court enters the Preliminary Approval Order, each Party agrees that (i) such Order is not in any respect an adjudication of any fact or issue for any purpose other than the effectuation of this Agreement; (ii) such Order may not be considered as law of the case or res judicata or have collateral estoppel effect in this or any other proceeding other than for purposes of effectuating this Agreement; and (iii) it will make no assertion in any court or proceeding inconsistent with clauses (i) and (ii) of this Section 3.3.

4. NOTICE, OPT-OUTS, AND OBJECTIONS

4.1 **Notice Plan.** Subject to the entry of the Preliminary Approval Order, the Settlement Administrator will implement the Notice Plan described herein, using the forms of Notice approved by the Court in the Preliminary Approval Order as entered. The Notice Plan has three components: (1) Mail Notice; (2) Publication Notice; and (3) notice on the Settlement Website. Subject to the entry of the Preliminary Approval Order, the Notice Program is to be implemented as follows:

4.1.1 Within seven (7) days after entry of the Preliminary Approval Order, the Settlement Class Representatives will provide the Settlement Administrator with contact information in their or Settlement Class Counsel's possession for banks, credit unions, and other financial institutions that are potentially Settlement Class Members. Based upon information obtained from the Settlement Class Representatives (directly or through Settlement Class Counsel) and from other reasonably available sources, the Settlement Administrator will prepare a final list of potential Settlement Class Members to which Mail Notice will be issued.

4.1.2 Mail Notice will be sent to those on the final list described in Section 4.1.1 by the Notice Deadline. The "Mail Notice" shall consist of the long-form notice, in the form attached hereto as Exhibit 4, and Claim Form, in the form attached as Exhibit A to the Distribution Plan attached hereto as Exhibit 1. For any Mail Notices that are returned as undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Mail Notice to the updated address as indicated. For any Mail Notices that are returned as undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Mail Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt to re-mail any Mail Notices that are returned as undeliverable.

4.1.3 The Settlement Administrator will cause to be published in the digital edition of the *ABA Banking Journal* and/or other publications typically read by bank and credit union executives the short-form notice attached hereto as Exhibit 5 (the "Publication Notice"). The publication(s) in which the notice will appear and the date(s) of the Publication Notice will be determined by the Settlement Administrator in consultation with the Parties.

4.1.4 By the Notice Deadline, the Settlement Administrator will establish a toll-free number to respond to inquiries from Settlement Class Members.

4.1.5 By the Notice Deadline, the Settlement Administrator will create a website that will contain the information and documents required by this Agreement (the "Settlement Website"). The Settlement Website will be configured so that the Settlement Class Members may file claims electronically.

4.1.6 At least thirty (30) days before the Final Approval Hearing, the Settlement Administrator shall provide Settlement Class Counsel and Arby's Counsel with one or more affidavits confirming that the Notice Plan was completed in accordance with the Parties' instructions and the Court's approval. Settlement Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with the Settlement Class Representatives' motion for final approval of the Settlement.

4.2 **28 U.S.C. § 1715 Notice.** Arby's shall be responsible for providing notice of the Settlement to the appropriate state or federal officials in accordance with the Class Action Fairness Act of 2005 ("CAFA"). See 28 U.S.C. § 1715.

4.3 **Opt-Out Procedures.** The Parties agree that the Settlement Class Representatives will request that the Court enter the Preliminary Approval Order approving the following procedures for Class Members to request to "opt out" of the Settlement (i.e., to be excluded from the Settlement Class). Subject to the Court's entry of the Preliminary Approval Order, the opt-out procedures shall be as follows:

4.3.1 **Opt-Out Requests.** Exclusion requests must be made in writing, state that the Class Member has chosen to opt out of or exclude itself from the Settlement Class, and include the name of this action; the full name, address, and telephone number of the Settlement Class Member; the name, address, email address, telephone number, position, and signature of the individual who is acting on behalf of the Settlement Class Member; and the number of Alerted-On Payment Card Accounts issued by the Settlement Class Member. A request to opt out shall be considered valid only if the Class Member completes and signs the request for exclusion that includes all the information described in the prior sentence, and sends such letter to the Settlement Administrator at the address provided in the Notice attached as Exhibit 4, postmarked no more than ninety (90) days after the date the Preliminary Approval Order is entered. Each Class Member that submits a request to opt out in accordance with this Section 4.3.1 shall be excluded from the Settlement Class. No request to opt out of the Settlement shall be valid unless the Class Member requests to be excluded from the Settlement Class in accordance with the procedures set forth herein. Each Class Member that does not submit a valid request to opt out shall remain in the Settlement Class and shall be bound by the Settlement and the release provided in Section 6 of this Agreement.

4.3.2 **Deficient Opt-Out Notifications.** In the event that a Class Member purports to provide notice of its intention to opt out of the Settlement but fails to provide all of the information set forth above, the Settlement Administrator shall, within ten (10) days of receiving the deficient notice, send the Class Member a deficiency notice. The deficiency notice shall inform the Class Member that its attempt to opt out is deficient, invalid, and without legal effect. The deficiency notice shall be sent by the Settlement Administrator via email, and, if email is not feasible, then by USPS Priority Express mail. The deficiency notice shall also inform the Class Member that it must re-submit to an email address to be provided by the Settlement Administrator a valid notice requesting exclusion that includes all of the required information by the later of (i) ten (10) days from the date of the deficiency notice; or (ii) the opt out deadline set forth in

Section 4.3.1 in order for its opt-out request to be effective. If the Class Member fails to provide all the required information on or before that deadline, then its attempt to opt out shall be invalid and have no legal effect, and the Class Member shall remain in the Settlement Class and shall be bound by the Settlement and the release provided in Section 6 of this Agreement.

4.3.3 Opt-Out Reports. The Settlement Administrator shall provide the Parties with copies of all opt-out requests on a weekly basis. Within seven (7) days of the date set forth in the Notices by which opt-out requests must be postmarked, the Settlement Administrator shall send to Settlement Class Counsel and to Arby's Counsel a report identifying (a) each Class Member that submitted a request to opt out; (b) the number of Alerted-On Payment Card Accounts issued by such Class Member; and (c) the Settlement Administrator's determination as to the validity or invalidity of each Class Member's request to opt out pursuant to the provisions of Section 4.3.1 (the "Opt-Outs Report").

(a) **Correction Requests.** Within fourteen (14) days of the Settlement Administrator's delivery of the Opt-Outs Report pursuant to Section 4.3.3, the Settlement Class Representatives, through Settlement Class Counsel, and Arby's, through Arby's Counsel, shall have the opportunity to submit a request that the Settlement Administrator correct any information included in the Opt-Outs Report that is believed to be incorrect, including but not limited to information regarding the number of Alerted-On Payment Card Accounts actually issued by a Class Member (a "Correction Request"). Any such Correction Request must be provided to the Settlement Administrator and to all other Parties in accordance with Section 11.

(i) The Parties shall meet and confer regarding any Correction Requests prior to submitting them to the Settlement Administrator. If there is disagreement among the Parties regarding a Correction Request, the Party disputing the Correction Request shall have three (3) business days following the submission of the Correction Request to submit a request that the Settlement Administrator reject the Correction Request.

(ii) If any party submits a Correction Request pursuant to the procedures set forth in Section 4.3.3(a), then Arby's shall cause the Settlement Administrator, not later than seven (7) days after the later of (i) the date of the Correction Request; or (ii) any objection or dispute regarding such Correction Request, to deliver to Settlement Class Counsel and to Arby's Counsel another version of the Opt-Outs Report incorporating any requested corrections that the Settlement Administrator determines should be made. Any Opt-Outs Report delivered pursuant to this Section 4.3.3(a) shall supersede and replace any prior version of the Opt-Outs Report.

(b) **Final Opt-Outs Report.** Following the time period for the submission of any Correction Requests and, if applicable, the Settlement Administrator's delivery of another version of the Opt-Outs Report pursuant to Section 4.3.3(a), and 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 prior to the Final Approval Hearing date. If there is no dispute, then the "Final Opt-Outs Report" shall be the Opt-Outs Report filed with the Court. In the event of a dispute, the "Final Opt-Outs Report" shall be the Opt-Outs Report filed with the Court as modified, if at all, by the Court's ruling on such dispute.

4.3.4 Effect of Opt-Outs by Settlement Class Members.

(a) **Right of Termination.** Arby's shall have the sole discretion to terminate the Settlement Agreement if Settlement Class Members that, according to the Final Opt-Outs Report, issued more than a certain number of Alerted-On Payment Card Accounts submit valid requests to opt out. That number has been separately agreed to by the Parties and will be submitted to the Court for *in camera* review if requested. If Arby's elects to terminate this Settlement Agreement, it must provide written notice of termination to the Settlement Class Representatives pursuant to Section 11 and to the Court no later than seven (7) days after the later of (i) the deadline to present disputes to the Court regarding the Opt-Outs Report pursuant to Section 4.3.3(b); or (ii) the Court's ruling on any dispute presented to the Court regarding the Opt-Outs Report pursuant to Section 4.3.3(b).

4.4 Objections by Settlement Class Members. The Parties agree that the Settlement Class Representatives will request that the Court enter the Preliminary Approval Order, which sets out procedures for Settlement Class Members to object to the Settlement, the Application, or both.

5. SETTLEMENT CONSIDERATION

5.1 In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases set forth in Section 6 and the dismissal with prejudice of the Action pursuant to the Final Judgment, and subject to the conditions and limitations set forth in this Agreement, Arby's hereby agrees to pay and provide the settlement consideration described in this Section.

5.2 In no event shall Arby's be required to pay or provide more than the settlement consideration set forth in this Section. In no event shall Arby's have any obligation under this Section, except under Section 5.3.2, unless and until the Effective Date occurs.

5.3 Arby's shall fund the following payments of the settlement consideration, as set forth below and subject to the limitations and conditions set forth herein.

5.3.1 Distributions to Class Members Who Submit Approved Claims. As set forth in the Distribution Plan (attached hereto as Exhibit 1), Arby's will fund distributions to those Settlement Class Members that submit Valid Claims. Each Party agrees that it shall take the actions required of it in the Distribution Plan. Payments to Settlement Class Members will be on a "claims made" basis, meaning that Arby's will fund only those Approved Claims submitted by Settlement Class Members in accordance with the Distribution Plan. As set forth in the Distribution Plan, the maximum payment by Arby's to be distributed to Settlement Class Members is equal to the Maximum Non-Assessed Payment Card Accounts Amount plus the Maximum Assessed Payment Card Accounts Amount. Arby's will not be required to establish a settlement fund. Instead, within 30 days of the later of (i) the date on which the amount of the Arby's Payment becomes final pursuant to the Distribution Plan; or (ii) the Effective Date, Arby's shall pay the Arby's Payment to the Settlement Administrator for distribution to Settlement Class Members according to the Distribution Plan.

5.3.2 Costs of Settlement Administration. Costs of Settlement Administration shall be borne alone by Arby's. Amounts owed by Arby's under this Section 5.3.2 shall be paid directly to the Settlement Administrator as agreed upon between Arby's and the Settlement Administrator.

5.3.3 Payment of Attorneys' Fees, Costs, and Expenses and Service Payments.

Arby's shall pay Service Payments and fees, costs, and expenses of Settlement Class Counsel as provided in, and subject to the limitations set forth in, Section 7 hereof.

5.4 Arby's shall be under no obligation to fund any other, additional, or greater amounts than the Settlement consideration reflected in Sections 5.3.1, 5.3.2, 5.3.3, and 7 and may withdraw from the Settlement if the amount awarded corresponding to any such Section is greater than the amount set forth in that Section or if any other award for payment not reflected in these Sections is made. The attorneys' fees, costs, and expenses and any Service Awards awarded by the Court will be funded by Arby's, not the Settlement Class Members. The Settlement Class Representatives will not seek and shall cause Settlement Class Counsel not to seek attorneys' fees, costs, and expenses and Service Awards other than as provided for in Section 5.3.3.

5.5 Visa Assessment. Arby's agrees not to take action against Visa seeking to prevent Visa from distributing the Visa Assessment to Settlement Class Members. For the avoidance of doubt the foregoing shall not prohibit Arby's from asserting against Visa (1) any third-party claim Arby's may have against Visa with respect to the claims being made against Arby's in *Banc of America Merchant Services, LLC v. Arby's Restaurant Group, Inc.*, No. 20-CVS-426 (N.C. Super. Ct., Mecklenburg Cnty.) and/or (2) any claim against Visa Arby's may have or obtain directly, as subrogee, or as assignee to recover some or all of the amount of the Visa Assessment from Visa.

5.6 Injunctive Relief.

5.6.1 Comprehensive Information Security Program. Arby's agrees that for three years following the execution of this Settlement Agreement, it shall establish and implement, to the extent it has not done so already, and through the remainder of the three-year period maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of payment card data that Arby's collects or receives at its point-of-sale systems in the United States. Such program shall consist of the following administrative, technical, and physical safeguards appropriate to Arby's size and complexity, the nature and scope of Arby's activities, and the sensitivity of the cardholder data at issue:

(a) the designation of an employee or employees to coordinate and be accountable for the information security program;

(b) the identification of material internal and external risks to the security, confidentiality, and integrity of cardholder data that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks;

(c) the design and implementation of reasonable safeguards, where appropriate, to control the risks identified through risk assessment and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures; and

(d) the evaluation and adjustment of Arby's information security program described herein in light of the results of the testing and monitoring required by Section 5.6.1(c) or any other circumstances, including any material changes to Arby's operations or business arrangements, that Arby's

knows or has reason to know may have a material impact on the effectiveness of such information security program.

5.6.2 Safe Harbor. If, within the year prior to or within the three years following the execution of this Settlement Agreement, Arby's obtains a Report on Compliance pursuant to the Payment Card Industry Data Security Standard (PCI DSS) from a Qualified Security Assessor as defined by the Payment Card Industry Security Standards Council certifying Arby's as compliant with the PCI DSS, then Arby's shall be deemed compliant with the Comprehensive Information Security Program requirements of Section 5.6.1 for one year from the date of such Report on Compliance. Provided however:

(a) A practice by Arby's shall not be deemed compliant with the Comprehensive Information Security Program requirements of Section 5.6.1 based upon a Report on Compliance if Arby's made a representation, express or implied, regarding the practice that either misrepresented or omitted a material fact and such misrepresentation or omission would likely affect a reasonable Qualified Security Assessor's decision about whether the practice complied with the PCI DSS. Further, in the event that such a misrepresentation or omission was made for the purpose of deceiving the Qualified Security Assessor, Arby's shall not be deemed compliant with any portion of Section 5.6.1 based on that Report on Compliance.

(b) Arby's shall not be deemed compliant with the Comprehensive Information Security Program requirements of Section 5.6.1 based upon a Report on Compliance as to any practice that is a significant change from any practice in place at the time of the Report on Compliance in question unless, at the time of the significant change, a Qualified Security Assessor certifies that the significant change does not cause Arby's to fall out of compliance with the PCI DSS.

6. RELEASE OF CLAIMS

6.1 Release of Settlement Class Claims. As of the Effective Date, the Settlement Class Representatives and all other Settlement Class Members, on their own behalves and on behalf of their respective past and present parents, subsidiaries, affiliates, divisions, successors, predecessors, assignors, assignees, and assigns, and each of their respective past and present officers, directors, shareholders, partners, members, insurers, agents, employees, associates, and attorneys ("Plaintiff Releasing Persons"), shall be deemed to have waived any right to assert against Arby's and its present, former, and future parents, subsidiaries, affiliates, divisions, successors, predecessors, assignors, assignees, and assigns, and each of their respective present, former, or future officers, directors, shareholders, partners, members, insurers, employees, associates, agents, acquirers, processors, representatives, attorneys, and accountants (collectively, "Arby's Released Persons"), and to have irrevocably released and forever discharged the Arby's Released Persons from and for, any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands of any kind whatsoever, existing or potential, suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise ("Claims"), including any known or unknown Claims, which they ever had, now have, or may claim now or in the future to have that (i) were alleged or asserted or could have been alleged or asserted against any of the Arby's Released Persons in the Financial Institutions Complaint; (ii) arise out of the same nucleus of operative facts as any of the claims alleged or asserted in the Financial Institutions Complaint; or (iii) arise out of or relate to the Intrusion ("Plaintiff Released Claims").

6.2 Release of Plaintiff Released Persons. As of the Effective Date, Arby's shall be deemed to have waived any right to assert against the Settlement Class Representatives, the other Settlement Class Members, and Settlement Class Counsel ("Plaintiff Released Persons") and to have irrevocably released and forever discharged the Plaintiff Released Persons from and for any and all Claims, including any known or unknown Claims, which it ever had, now has, or may claim now or in the future to have, relating to the institution or prosecution of the Action ("Arby's Released Claims").

6.3 Unknown Claims. For purposes of the releases set forth in Sections 6.1 and 6.2 and the proposed Final Judgment attached as Exhibit 2 hereto, "unknown Claims" means Claims that Arby's and the Plaintiff Releasing Persons do not know or expect to exist in their favor as of the entry of the Final Judgment, which if known by them might have affected their settlement of the Action. It is the intention of the Parties and the Settlement Class Members that, upon the Effective Date, Arby's and each of the Plaintiff Releasing Persons shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by Section 1542 of the California Civil Code or by any law or any state or territory of the United States, federal law, or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, the provisions, rights, and benefits of any statute or law which might otherwise render a general release unenforceable with respect to unknown claims. Section 1542 of the California Civil Code reads:

Section 1542. Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Upon the Effective Date, Arby's and each Plaintiff Releasing Person shall be deemed to have acknowledged that such party is aware that such party may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Plaintiff Released Claims and Arby's Released Claims, but it is such party's intention to, and each of them shall be deemed upon the Effective Date to, have waived and fully, finally, and forever settled and released any and all Plaintiff Released Claims and Arby's Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

6.4 Bar to Future Suits. The Parties agree that the Settlement Class Representatives will request that the Court enter the proposed Final Judgment attached as Exhibit 2 hereto as the Final Judgment, which provides that Arby's, the Settlement Class Representatives, and the other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Plaintiff Released Persons or Arby's Released Persons or based upon any actions taken by any Plaintiff Released Persons or Arby's Released Persons that are authorized or required by this Agreement or by the Final Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this Section 6.4.

7. ATTORNEYS' FEES, COSTS, AND EXPENSES AND SERVICE PAYMENTS

7.1 The Application shall seek from the Court an award of no more than \$2,312,864.00 (the "Maximum Award") to be paid by Arby's to cover (i) any Court-approved Service Payments to the Settlement Class Representatives, not to exceed \$10,000 per Settlement Class Representative; and (ii) any Court-

approved attorneys' fees, costs, and expenses of Settlement Class Counsel, not to exceed \$2,300,000. Arby's shall have no liability to pay any amount under this Section 7.1 unless and until the Effective Date has occurred. As of the Effective Date, Arby's shall be liable for the amount of Court-approved attorneys' fees, costs, and expenses and Service Payments awarded in the Final Fees Order (the "Final Fees Amount") to the extent and only to the extent it does not exceed the Maximum Award. Any Final Fees Amount owed by Arby's under this Section shall be paid by wire transfer to an account that Settlement Class Representatives shall authorize and direct Settlement Class Counsel to establish within fifteen (15) business days of the later of (a) the Effective Date; or (b) receipt by Arby's of Settlement Class Counsel's completed W-9 forms and wire transfer information for the payment of the Final Fees Amount. The Settlement Class Representatives shall authorize and direct Settlement Class Counsel to distribute from such payment by Arby's any awarded Service Payments to the Settlement Class Representatives and any awarded attorneys' fees, costs, and expenses to the relevant counsel. Arby's shall have no responsibility for any such distribution or any failure to make such distribution.

7.2 The Settlement Class Representatives agree that the Application will not seek attorneys' fees, costs, and expenses and Service Payments that exceed the Maximum Award. Arby's agrees not to oppose the Application as long as it does not seek attorneys' fees, costs, and expenses and Service Payments that exceed the Maximum Award.

7.3 Notwithstanding anything herein, nothing in this Settlement Agreement is in any way contingent or conditioned upon the Final Fees Amount being in any particular amount, so long as it does not exceed the Maximum Award. Thus in the event the Application is denied, in whole or in part, and/or the amount awarded on the Application is less than the Maximum Award or such other amount as may be sought by the Application, such result will not have any effect on the remainder of the Settlement Agreement or on the entry of the Final Judgment or on the occurrence of the Effective Date, nor will such result be grounds for termination of the Settlement Agreement, and instead the remaining provisions of this Settlement Agreement will remain in full force and effect.

7.4 Other than any such liability Arby's may incur under Section 7.1, Arby's shall have no liability to any Class Member, to Settlement Class Counsel, or to any other attorney for any Class Member for any attorney's fees, costs, or expenses incurred by any of them in connection with the Action or the Intrusion. The Settlement Class Representatives agree to hold Arby's harmless from any claim that the term "Settlement Class Counsel" as defined in Section 1.55 of this Agreement fails to include any person or firm who claims to be entitled to a share of any attorneys' fees awarded to Settlement Class Counsel in connection with the Action.

8. CONTINGENCIES

8.1 **Contingencies.** Any Party shall have the right to terminate this Agreement by notice pursuant to Section 11 herein prior to the Effective Date if (a) the Court fails to enter the Preliminary Approval Order; (b) the Court fails to enter the Final Judgment; (c) the Final Judgment is modified in connection with an appeal, motion, or petition with regard to the Final Judgment, other than a modification to the Final Fees Amount that does not result in the Final Fees Amount exceeding the Maximum Award. Additionally, the Parties can together terminate the Agreement by written instrument signed by all Parties or their successors in interest or their duly authorized representatives prior to the Effective Date and Arby's may elect to terminate this Agreement pursuant to Section 4.3.4(a) above.

8.2 **Effect of Termination**

8.2.1 In the event that this Agreement is terminated pursuant to Section 8.1, then all obligations under this Agreement shall cease to be of any force and effect, and the Parties shall be deemed to have reverted to their respective statuses as of November 13, 2019 and will seek a scheduling order that preserves the schedule in the Action existing as of November 13, 2019, beginning with the Settlement Class Representatives' motion for class certification being due twenty-one (21) days after the Agreement is terminated. In the event of such termination, the Parties shall proceed in all respects as if this Agreement, its exhibits, and any related agreements or orders had never been executed or entered, except that the provisions set forth in this Section 8.2 and in Sections 10, 12.2, and 12.8 shall survive any such termination. Further, the fact that Arby's did not oppose the certification of a Settlement Class or that the Court preliminarily or finally approved the certification of a Settlement Class shall not be used or cited thereafter by an person or entity, including in any contested proceeding relating to the certification of any class.

8.2.2 In the event that this Agreement is terminated pursuant to Section 8.1, then the Parties agree to jointly seek an order from the Court restoring the Parties to their positions as of November 13, 2019 with respect to the Action.

9. **CONTINUING JURISDICTION**

9.1 The Parties agree that the Settlement Class Representatives will request that the Court enter the proposed Final Judgment attached as Exhibit 2 hereto as the Final Judgment, which provides that the Court shall retain jurisdiction to implement and enforce this Agreement's terms and the Final Judgment.

10. **PUBLICITY; CONFIDENTIALITY**

10.1 The Parties agree that all of their negotiations relating to this Settlement Agreement are, and shall remain, confidential. The Parties further agree that they will not make the Settlement public until the Settlement Agreement is formally submitted to the Court. In issuing public statements regarding the Settlement and/or the Settlement Agreement, including responding to any inquiries from the public media concerning the Action, the Parties will limit, and cause their counsel to limit, their statements to the provision of such factual information as is contained in the Settlement Agreement, the pleadings in the Action, and any of the various Court orders in the Action. The Parties and their counsel may further state to the effect that "the Action has been settled to the satisfaction of all parties." Nothing in this Section 10 shall limit (a) the ability of Settlement Class Counsel or the Settlement Class Representatives, after the Settlement Agreement is formally submitted to the Court, to communicate privately or publicly to Class Members the basis for their support of the Settlement, provided that no information regarding the negotiations relating to the Settlement is disclosed or (b) the ability of Arby's or its successors (i) to make such public disclosures as the federal securities laws require or to provide information about the settlement to state and federal regulators or to other government officials; or (ii) to disclose information about the Settlement on a confidential basis to Arby's affiliates, owners, attorneys, auditors, insurers, current or potential sources of financing, and their representatives after the Settlement Agreement is formally submitted to the Court.

11. **NOTICES**

11.1 Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email (in which case it will be effective on transmission to each representative of a party for whom an email address is listed below, unless the party making delivery is notified that the

email was not received by such representative of the other party) or overnight mail (in which case it will be effective on the business day after being deposited with a reputable delivery service) as follows:

To Settlement Class Representatives:	To Arby's:
<p>Brian Gudmundson ZIMMERMAN REED 1100 IDS Center, 80 South 8th Street Minneapolis, MN 55402 brian.gudmundson@zimmreed.com</p> <p>James Pizzirusso HAUSFELD LLP 1700 K Street, NW Suite 650 Washington, DC 20006 jpizzirusso@hausfeld.com</p> <p>Karen Riebel LOCKRIDGE GRINDAL NAUEN P.L.L.P 100 Washington Avenue South Suite 2200 Minneapolis, MN 55401 khriebel@locklaw.com</p>	<p>Douglas H. Meal Seth Harrington ORRICK, HERRINGTON & SUTCLIFFE LLP 222 Berkeley Street Suite 2000 Boston, MA 02116 dmeal@orrick.com sharrington@orrick.com</p> <p>Michelle L. Visser ORRICK, HERRINGTON & SUTCLIFFE LLP The Orrick Building 405 Howard Street San Francisco, CA 94105 mvisser@orrick.com</p> <p>Nils Okeson INSPIRE BRANDS Three Glenlake Parkway NE Atlanta, GA 30328 nokeson@InspireBrands.com</p>

12. MISCELLANEOUS

12.1 **Entire Agreement.** This Agreement contains the entire agreement between the Parties as to the Settlement and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement.

12.2 **No Liability.** Nothing contained herein or in any document or instrument contemplated by this Agreement is to be construed as an admission of wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Parties have entered into this Agreement solely as a compromise of all claims in the Action for the purpose of concluding the disputes between them and the Agreement may not be used by any third party against any Party. Pursuant to FED. R. EVID. 408, the entering into and carrying out of this Agreement and any negotiations or proceedings related to it shall not be construed as, nor deemed evidence of, an admission or concession by any of the Parties or a waiver of any applicable statute of limitations and shall not be offered or received into evidence in any action or proceeding against any Party in any court, administrative agency, or other tribunal for any purpose whatsoever.

12.3 **Amendment.** This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

12.4 **Parties Authorized To Enter into Agreement.** Each person executing this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement and to bind the person or entity on whose behalf such person executed this Agreement to carry out the obligations provided for herein. Each person executing the Agreement on behalf of the Settlement Class Representatives or Arby's covenants, warrants, and represents that he or she is and has been fully authorized to do so by the Settlement Class Representatives or Arby's. Each Settlement Class Representative and Arby's, by having authorized this Agreement to be executed on his, her, or its behalf, hereby further represents and warrants that it intends to be bound fully by the terms of this Agreement.

12.5 **No Third-Party Beneficiaries.** Except as expressly stated herein in Section 6 of the Agreement with respect to the Arby's Released Persons and the Plaintiff Released Persons, this Agreement is intended for the sole benefit of the Parties, and each of their respective successors, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

12.6 **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of Georgia without regard to its choice of law principles.

12.7 **No Construction Against Drafter.** This Agreement shall be deemed to have been drafted by the Parties and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

12.8 **Agreement Binding on Successors in Interest.** This Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

12.9 **Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the Parties' attorneys. The signatories may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original and execution of counterparts shall have the same force and effect as if all signatories had signed the same instrument. Signatures sent in PDF format by email will constitute sufficient execution of this Agreement.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by their duly authorized attorneys.

Counsel for Arby's

Douglas H. Meal
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Suite 2000
Boston, MA 02116

Settlement Class Counsel



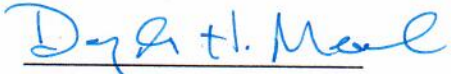
Brian C. Gudmundson
ZIMMERMAN REED LLP
1100 IDS Center, 80 South 8th St
Minneapolis, MN 55402

James J. Pizzirusso
HAUSFELD LLP
1700 K. Street, NW, Suite 650
Washington, DC 20006

Karen H. Riebel
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by their duly authorized attorneys.

Counsel for Arby's



Douglas H. Meal
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Suite 2000
Boston, MA 02116

Settlement Class Counsel

Brian C. Gudmundson
ZIMMERMAN REED LLP
1100 IDS Center, 80 South 8th St
Minneapolis, MN 55402

James J. Pizzirusso
HAUSFELD LLP
1700 K. Street, NW, Suite 650
Washington, DC 20006

Karen H. Riebel
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401


IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by their duly authorized attorneys.

Counsel for Arby's

Douglas H. Meal
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Suite 2000
Boston, MA 02116

Settlement Class Counsel

Brian C. Gudmundson
ZIMMERMAN REED LLP
1100 IDS Center, 80 South 8th St
Minneapolis, MN 55402



James J. Pizzirusso
HAUSFELD LLP
1700 K. Street, NW, Suite 650
Washington, DC 20006

Karen H. Riebel
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by their duly authorized attorneys.

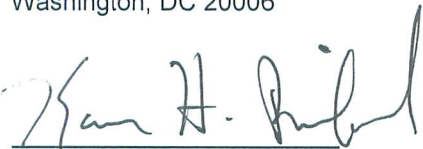
Counsel for Arby's

Douglas H. Meal
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Suite 2000
Boston, MA 02116

Settlement Class Counsel

Brian C. Gudmundson
ZIMMERMAN REED LLP
1100 IDS Center, 80 South 8th St
Minneapolis, MN 55402

James J. Pizzirusso
HAUSFELD LLP
1700 K. Street, NW, Suite 650
Washington, DC 20006



Karen H. Riebel
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401

EXHIBIT 1

Exhibit 1—Plan of Distribution for the Cash Component of the Settlement

1. **Definitions.** Terms defined in the settlement agreement dated February 10, 2020 (the “Settlement Agreement”), to which this document is an exhibit, are incorporated herein by reference. In addition, as used herein, the terms set forth in this section in boldface type will have the following meanings:

1.1 **Arby’s Payment.** This term shall have the meaning set forth in Section 3.5.

1.2 **Claim.** The request for a Payment Award made by a Settlement Class Member by submitting a Claim Form.

1.3 **Claim Form.** The form to be used by Settlement Class Members seeking payment in connection with the Settlement, in the form attached hereto as Exhibit A.

1.4 **Claimed-On Account.** An Assessed Payment Card Account or a Non-Assessed Payment Card Account that was issued by a Settlement Class Member that submits a Claim relating to such account.

1.5 **Claims Deadline.** The deadline for submitting Claim Forms set by the Court in the Preliminary Approval Order.

1.6 **Disputed Claim.** A Claim that the Settlement Administrator does not determine to be a Valid Claim.

1.7 **Final Assessed Card Account Payment Amount.** This term shall have the meaning set forth in Section 3.6.2.

1.8 **Final Non-Assessed Card Account Payment Amount.** This term shall have the meaning set forth in Section 3.6.1.

1.9 **Payment Award.** This term shall have the meaning set forth in Section 2.

1.10 **Preliminary Assessed Card Account Payment Amount.** This term shall have the meaning set forth in Section 2.

1.11 **Preliminary Assessed Total.** This term shall have the meaning set forth in Section 3.6.2.

1.12 **Preliminary Non-Assessed Card Account Payment Amount.** This term shall have the meaning set forth in Section 2.

1.13 **Preliminary Non-Assessed Total.** This term shall have the meaning set forth in Section 3.6.1.

1.14 **Valid Claim.** The request for a Payment Award made by a Settlement Class Member in a Valid Claim Form.

1.15 **Valid Claim Form.** A Claim Form that has been fully completed, timely submitted, and signed by a Settlement Class Member and that makes a claim as to no more than the total Alerted-On Payment Card Accounts issued by the Settlement Class Member.

2. **Claims.** A Settlement Class Member can seek a payment under the Settlement (a “Payment Award”) based on the number of Assessed Card Accounts and Non-Assessed Card Accounts that the Settlement Class Member issued. To be eligible to receive a Payment Award, a Settlement Class Member must timely (*i.e.*, before the Claims Deadline) submit a Valid Claim Form. Settlement Class Members do not need to submit evidence of costs that they incurred with respect to their Claimed-On Accounts in order to submit a Valid Claim Form or be entitled to a Payment Award. Each Settlement Class Member that submits a Valid Claim Form will be eligible for (i) a payment equal to seventy-eight percent (78%) of the total number of Non-Assessed Payment Card Accounts claimed by such Settlement Class Member on its Valid Claim Form, multiplied by \$2.00 (the “Preliminary Non-Assessed Card Account Payment Amount”) and (ii) a payment equal to seventy-eight percent (78%) of the total number of Assessed Payment Card Accounts claimed by such Settlement Class Member on its Valid Claim Form, multiplied by \$0.32 (the “Preliminary Assessed Card Account Payment Amount”),¹ in Sections 3.6.1 and 3.6.2 below.

2.1 **Claim Form.** The Claim Form is attached as Exhibit A hereto. Settlement Class Members that choose to submit a Claim Form must timely complete and submit the Claim Form, including signing and dating the Claim Form.

3. **Claim Submission, Validation, and Calculation Process.**

3.1 The Settlement Administrator shall provide periodic updates to Settlement Class Counsel and Arby’s Counsel regarding Claim Form submissions beginning within thirty (30) business days after the commencement of the Notice Plan and continuing on a bi-weekly basis thereafter until all submitted Claim Forms are processed. The updates shall list the name of each Settlement Class Member that has submitted a Claim Form, state whether that Claim Form has been reviewed by the Settlement Administrator, and set forth the number of Assessed Payment Card Accounts and Non-Assessed Payment Card Accounts claimed by each such Settlement Class Member on that Claim Form.

3.2 The Settlement Administrator, in its discretion to be reasonably exercised and after considering any input provided by Settlement Class Counsel or Arby’s Counsel, will evaluate each Claim Form to determine whether: (a) the claimant is a Settlement Class Member; (b) the Claim Form is complete and accurate; (c) the claimant signed the Claim Form as required; (d) the Claim Form was timely submitted; and (e) the number of Alerted-On Payment Card Accounts as to which the Claim Form makes a Claim does not exceed the number of Alerted-On Payment Card Accounts issued by the claimant that signed the Claim Form. Unless the Settlement Administrator determines that a Claim Form satisfies each of the five requirements for a Valid Claim Form set forth in the preceding sentence, it shall determine that the Claim Form is not a Valid Claim Form and that the Claim made therein is not a Valid Claim. The Settlement Administrator may request supplementation of a Claim Form or additional information necessary to validate or audit a Claim in order to determine if the Claim Form is a Valid Claim Form and if the Claim made therein is a Valid Claim. To the extent that a claimant fails to provide any supplementation or additional information so requested, the Settlement Administrator may for that reason alone determine that the Claim Form is not a Valid Claim Form and that the Claim asserted therein is not a Valid Claim.

¹ For example, if a Settlement Class Member submits a Valid Claim Form as to 50 Non-Assessed Payment Card Accounts and 100 Assessed Payment Card Accounts, that Settlement Class Member’s Preliminary Non-Assessed Card Account Payment Amount would be \$78.00 (0.78*50*\$2.00) and the Settlement Class Member’s Preliminary Assessed Card Account Payment Amount would be \$24.96 (0.78*100*\$0.32).

3.3 The Settlement Administrator shall provide the claimant in question with notice pursuant to Section 3.4.1 of any determination by the Settlement Administrator that a Claim Form is not a Valid Claim Form or the Claim asserted in a Claim Form is not a Valid Claim (such determination making a Claim a "Disputed Claim"). All such notices will be sent within thirty (30) days of the Claim Deadline unless (a) the Claim Form in question was filed after the Claim Deadline, (b) the Settlement Administrator requested supplementation or additional information as to such Claim pursuant to Section 3.2 above, or (c) the Settlement Administrator bases its determination to make the Claim a Disputed Claim on information not available to the Settlement Administrator as of the Claim Deadline.

3.4 If the Settlement Administrator determines that the Claim asserted in a Claim Form is a Disputed Claim, the following procedures will apply.

3.4.1 The Settlement Administrator will notify the claimant by email to the email address identified on the Claim Form (or by mail to the mailing address provided for those that do not provide email addresses) of the fact that, and of the reason(s) why and the extent to which, the Claim asserted in the Claim Form is a Disputed Claim, whereupon the Claim will be resolved pursuant to this Section 3.4.1 as follows.

(a) Each recipient of a notice pursuant to Section 3.4.1 herein will have fifteen (15) days from receipt of such notice to respond to the Settlement Administrator by reply email (or by return mail for those who did not provide an email address), stating whether the claimant accepts or rejects the Settlement Administrator's determination regarding the Disputed Claim. If the claimant timely responds by rejecting the Settlement Administrator's determination then, as part of that response, the claimant shall submit any documentation that it believes supports its rejection of the Settlement Administrator's conclusion that the Disputed Claim in question is not a Valid Claim. If the claimant fails to timely respond to the notice provided pursuant to this Section 3.4.1(a) or responds to that notice by accepting the Settlement Administrator's determination regarding the Disputed Claim, then the Settlement Administrator's determination regarding the Disputed Claim shall be deemed final and accepted by the claimant.

(b) If the claimant timely rejects the Settlement Administrator's determination regarding the Disputed Claim, the Settlement Administrator will have fifteen (15) days to reconsider the original determination, make a final determination, and communicate the final determination to the claimant by email (or regular mail for those who did not provide an email address). The claimant will have ten (10) days to reply back to the Settlement Administrator accepting or rejecting the final determination. If the claimant fails to timely respond to the notice provided pursuant to this Section 3.4.1(b) or responds to that notice by accepting the Settlement Administrator's determination regarding the Disputed Claim, then the Settlement Administrator's determination regarding the Disputed Claim shall be deemed final and accepted by the claimant.

(c) If the Settlement Administrator's determination regarding a Disputed Claim is deemed final and accepted by the claimant pursuant to Section 3.4.1(a) or Section 3.4.1(b) above, then that determination will be used in determining whether the Claim Form in question is a Valid Claim Form, in determining whether the Claim in question is a Valid Claim, and in calculating the claimant's Payment Award, if any. If the Settlement Administrator's final determination regarding the Disputed Claim pursuant to Section 3.4.1(b) above is timely rejected by the claimant, then the Disputed Claim will be resolved in accordance with the procedures set out below in Section 3.4.2.

3.4.2 After receipt of a claimant's timely rejection of the Settlement Administrator's final determination regarding a Disputed Claim pursuant to Section 3.4.1(c) above, the Settlement Administrator will provide Settlement Class Counsel and Arby's Counsel with copies of (i) the Claim Form in question, (ii) any documentation submitted by the claimant pursuant to Section 3.4.1(a) above, and (iii) any communications between the Settlement Administrator and the claimant related to the Disputed Claim.

(a) Settlement Class Counsel and Arby's Counsel will confer regarding the Disputed Claim.

(b) If Settlement Class Counsel and Arby's Counsel both agree with the claimant's rejection of the Settlement Administrator's conclusion that the Disputed Claim is not a Valid Claim, the Claim at issue shall be deemed a Valid Claim and that determination will be final. Settlement Class Counsel and Arby's Counsel will inform the Settlement Administrator of their determination by email and the Settlement Administrator will provide notice of that determination to the claimant.

(c) If either Settlement Class Counsel or Arby's Counsel or both disagree with the claimant's rejection of the Settlement Administrator's conclusion that the Disputed Claim is not a Valid Claim, then Settlement Class Counsel and Arby's Counsel will notify the Settlement Administrator by email and the Settlement Administrator's determination shall be final.

3.5 Within fourteen (14) days of the later of (a) the Settlement Administrator's completion of its review of all timely submitted Claim Forms to determine whether each Claim Form asserts a Valid Claim or a Disputed Claim, and (b) the resolution of all Disputed Claims pursuant to the dispute resolution process set forth in Section 3.4, the Settlement Administrator will provide a final report to Settlement Class Counsel and Arby's Counsel that sets forth the following information: (a) the name of each Settlement Class Member that submitted a Valid Claim; (b) the number of Assessed Card Accounts and Non-Assessed Card Accounts claimed by each such Settlement Class Member in its Claim Form; (c) the Payment Award to be distributed to each such Settlement Class Member; and (d) the total amount that must be funded by Arby's to cover all Payment Awards (the "Arby's Payment").

3.6 The Payment Award for each Settlement Class Member that submits a Valid Claim shall be calculated as follows:

3.6.1 In the event that the aggregate total of the Preliminary Non-Assessed Card Account Payment Amounts of all Settlement Class Members that submitted Valid Claims (the "Preliminary Non-Assessed Total") is less than or equal to the Maximum Non-Assessed Payment Card Accounts Amount, each such Settlement Class Member's Preliminary Non-Assessed Card Account Payment Amount will be the Settlement Class Member's "Final Non-Assessed Card Account Payment Amount." In the event that the Preliminary Non-Assessed Total is greater than the Maximum Non-Assessed Card Accounts Amount, each such Settlement Class Member's "Final Non-Assessed Payment Card Account Payment Amount" shall be equal to the Settlement Class Member's pro rata share of the Maximum Non-Assessed Payment Card Accounts Amount, based on the number of Non-Assessed Payment Card Accounts issued by the Settlement Class Member as compared to the total number of Non-Assessed Payment Card Accounts issued by all Settlement Class Members that submitted Valid Claims.

3.6.2 In the event that the aggregate total of the Preliminary Assessed Card Account Payment Amounts of all Settlement Class Members that submitted Valid Claims (the "Preliminary Assessed Total") is less than or equal to the Maximum Assessed Payment Card Accounts Amount, each such

Settlement Class Member's Preliminary Assessed Card Account Payment Amount will be the Settlement Class Member's "Final Assessed Card Account Payment Amount." In the event that the Preliminary Assessed Total is greater than the Maximum Assessed Payment Card Accounts Amount, each such Settlement Class Member's "Final Assessed Card Account Payment Amount" shall be equal to the Settlement Class Member's pro rata share of the Maximum Assessed Payment Card Accounts Amount, based on the number of Assessed Payment Card Accounts issued by the Settlement Class Member as compared to the total number of Assessed Payment Card Accounts issued by all Settlement Class Members that submitted Valid Claims.

3.7 A Settlement Class Member's Payment Award shall be equal to the sum of the Settlement Class Member's Final Non-Assessed Card Account Payment Amount plus the Settlement Class Member's Final Assessed Card Account Payment Amount.

3.8 Arby's shall submit the Arby's Payment to the Settlement Administrator within thirty (30) days after the Effective Date or thirty (30) days after the Settlement Administrator delivers the final report specified in Section 3.5, whichever is latest. Payments of approved claims shall be distributed by mail to the Settlement Class Members entitled to such payments within thirty (30) days after the Settlement Administrator's receipt of the Arby's Payment.

EXHIBIT A

CERTIFICATION OF PAYMENT CARDS (Please complete all parts of the question below.)

Question 1: Is your financial institution the issuer of one or more payment cards that were identified in either of the categories of alert described below? (Check all applicable boxes below.)

If you checked YES for either category of alert, indicate how many payment card accounts your financial institution issued that were identified in the referenced alert(s) and answer all the other questions about the payment card accounts you issued in that category. For purposes of completing this Claim Form, please note that a payment card number can have only one corresponding payment card account, even if your financial institution issued multiple payment cards bearing the card number.

<p>(a) Visa CAMS alerts in the US-2017-0057 series</p> <p style="text-align: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p style="text-align: center;">Number of Issued Accounts Identified in These Alerts</p> <p>How many of your issued accounts that were identified in the US-2017-0057 series alerts were also identified in a separate IC or RA alert sent by Visa between August 11, 2016 and February 7, 2017?</p>	<p style="text-align: center;">_____</p> <p style="text-align: center;">_____</p>
<p>(b) MasterCard ADC alerts in the ADC002618 series</p> <p style="text-align: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p style="text-align: center;">Number of Issued Accounts Identified in These Alerts</p> <p>How many of your issued accounts that were identified in the ADC002618 series alerts were also identified in a separate ADC alert sent by MasterCard between August 12, 2016 and February 8, 2017?</p> <p>How many of your issued accounts that were identified in the ADC002618 series alerts did not have an EMV-enabled payment card as of the date on which the account was used in the transaction at Arby's that resulted in the account's identification in an alert in the ADC002618 series. If your financial institution completed the transition to EMV-enabled payment cards on or before October 22, 2016, your answer to this question should be zero (0).</p> <p>Check here if your financial institution failed to enroll in the ADC program for the calendar year 2017 <input type="checkbox"/></p>	<p style="text-align: center;">_____</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">_____</p>

If you are unable to answer YES to either part of Question 1, then your financial institution is not a Settlement Class Member and is not eligible to participate in this settlement. Please do not submit this Claim Form.

SIGN CLAIM FORM

By submitting this Claim Form, the above-named Settlement Class Member certifies that it is eligible to make a claim in this settlement and that the information provided in this Claim Form is true and correct. The Duly Authorized Representative of the Settlement Class Member declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. The above-named Settlement Class Member understands that the claim made in this Claim Form may be subject to audit, verification, and Court review.

Signature of Duly Authorized Representative of Settlement Class Member	Date
Print Name	Title

CLAIM FORM SUBMISSION REMINDERS

- You may submit your Claim Form by mail or through the website at [SETTLEMENT WEBSITE].
- Please keep a copy of this Claim Form if submitting by mail.
- Claim Forms must be submitted through the website by [DATE] or mailed so that they are postmarked by [DATE].

EXHIBIT 2

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

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

CONSOLIDATED FINANCIAL
INSTITUTION CASE

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

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

[PROPOSED] FINAL JUDGMENT

A Final Approval Hearing was held before this Court on [DATE] to consider, among other things, whether the Settlement Agreement dated [DATE], including the exhibits thereto (the "Settlement Agreement") between the Settlement Class Representatives on behalf of themselves and the other Settlement Class Members, by and through Settlement Class Counsel, and Defendant Arby's Restaurant Group, Inc. ("Arby's"), by and through Arby's Counsel, represents a fair, reasonable, and adequate settlement of the Action, as well as the amount to be paid as Settlement Class Counsel's fees and litigation costs and expenses for litigating the Action and the amount of Service Payments to be paid to the Settlement Class Representatives.

Based on the Settlement Agreement, the Settlement Class Representatives' Motion for Final Approval of Class Action Settlement (ECF No. ____), the Settlement

Class Representatives' Motion for an Award of Attorneys' Fees, Expenses, and Service Payments for Settlement Class Representatives (ECF No. ____), the other submissions of the Parties in support of final approval of the Settlement, and all prior proceedings herein and good cause appearing based on the record, the Court **ORDERS, ADJUDGES AND DECREES** as follows:

1. The Court, for purposes of this Final Judgment, adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein. *See* Declaration of Karen Hanson Riebel (ECF No. ____) (Settlement Agreement attached as Exhibit [XX]).
2. The Court has jurisdiction over the subject matter of the Action and the Financial Institutions Complaint and has personal jurisdiction over the Parties and Settlement Class Members.
3. On [DATE], 2020, the Court entered an Order Preliminarily Approving Class Action Settlement and Directing Notice to Settlement Class, ECF No. ____ (the "Preliminary Approval Order") that provisionally certified the Settlement Class, preliminarily approved the Settlement Agreement, directed notice of the Settlement to the Settlement Class, and established a hearing date to consider the final approval of the Settlement, the Settlement Class Representatives' Service Payments Request, and the Settlement Class Representatives' motion for attorneys' fees, costs, and

expenses (the “Fee Request” and together with the Service Payments Request, the “Application”).

4. In the Preliminary Approval Order, the Court approved the Notice Plan described in Section 4.1 of the Settlement Agreement, the Notices, and the Claim Form, and found that the forms, content, and method of giving notice to the Settlement Class constituted the best practicable notice to the Settlement Class and were reasonable. A declaration confirming that the Notices have been mailed, published, and distributed according to the Notice Plan and the Preliminary Approval Order has been filed with the Court. *See* Declaration of [SETTLEMENT ADMINISTRATOR]. The Court finds that the distribution of the Notices has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreement.

5. The Notices and the Notice Plan provided the best notice practicable under the circumstances to the Class Members and fully satisfied the requirements of due process under the United States Constitution and Federal Rule of Civil Procedure 23. Based on the evidence and information supplied to the Court in connection with the Final Approval Hearing held on [DATE], the Court finds that the Notices were adequate and reasonable. The Court further finds that through the Notices, the Class Members have been apprised of the nature and pendency of the Action, the terms of

the Settlement Agreement, and their rights to request exclusion, object, and/or appear at the Final Approval Hearing.

6. The Court finds that Arby's has complied with the requirements of 28 U.S.C. § 1715.

7. The Court finds that the Settlement Class Representatives are similarly situated to absent Settlement Class Members and are typical of the Settlement Class and are adequate Settlement Class Representatives. The Court further finds that Settlement Class Counsel and the Settlement Class Representatives have fairly and adequately represented the Settlement Class. The Court grants final approval to its appointment, pursuant to Fed. R. Civ. P. 23(g), of Settlement Class Counsel and to its appointment of the Settlement Class Representatives as provided in the Preliminary Approval Order at ¶ 3 (ECF No. ____), appointing the following firms and individuals as Settlement Class Counsel:

James J. Pizzirusso
HAUSFELD LLP
1700 K. Street, NW
Suite 650
Washington, DC 20006

Karen Hanson Riebel
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900

Brian C. Gudmundson
ZIMMERMAN REED LLP
1100 IDS Center, 80 South 8th St
Minneapolis, MN 55402

and appointing as Settlement Class Representatives Fort McClellan Credit Union, Midwest America Federal Credit Union, and Gulf Coast Bank & Trust Company.

8. The Court certifies the following Settlement Class under Fed. R. Civ. P. 23(a) and 23(b)(3):

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

9. The Court has ruled on any disputes that the Parties presented regarding the Opt-Outs Report and has made any necessary modifications to the Opt-Outs Report at least seven (7) days prior to the entry of this Final Judgment.

10. The Final Opt-Outs Report is attached to this Final Judgment as Exhibit 1. Excluded from the Settlement Class are entities identified in the Final Opt-Outs Report as having submitted valid requests for exclusion from the Settlement Class (“Opt-Outs”). Opt-Outs shall not receive any benefits of the Settlement Agreement and shall not be bound by this Final Judgment.

11. The Court finds that the Settlement Class defined above satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) in 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, arise from the same operative facts as, and seek similar relief to the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel have fairly and adequately protected the interests of the Settlement Class, as the Settlement Class Representatives have no interests 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 are superior to other methods available for a fair and efficient resolution of this controversy.

12. The Court approves the Settlement as set forth in the Settlement Agreement and finds that the Settlement is in all respects fair, reasonable, adequate, and in the best interests of the Settlement Class Members. The Court further finds that the Settlement Agreement was the product of an arm's-length negotiation conducted in good faith by the Parties and their experienced counsel.

13. The Court approves the Distribution Plan attached as Exhibit 1 to the Settlement Agreement and orders the Settlement Administrator to distribute the

Arby's Payment to the Settlement Class Members in accordance with the terms of the Distribution Plan.

14. The Court finds that the Parties face significant risks, expenses, delays, and uncertainty, including as to outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the tremendous expense associated with it, weigh in favor of approval of the Settlement reflected in the Settlement Agreement.

15. The Court has reviewed all Objections to the Settlement Agreement and/or to the Application filed with the Court or submitted by Settlement Class Counsel with the Motion for Final Approval. These Objections are hereby found to be without merit and are overruled. All persons and entities who have not objected to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objection to the Settlement, including but not limited to by appeal, collateral attack, or otherwise.

16. As of the Effective Date, the Settlement Class Representatives and all other Settlement Class Members, on their own behalves and on behalf of their respective past and present parents, subsidiaries, affiliates, divisions, successors, predecessors,

assignors, assignees, and assigns, and each of their respective past and present officers, directors, shareholders, partners, members, insurers, agents, employees, associates, and attorneys (“Plaintiff Releasing Persons”), shall be deemed to have waived any right to assert against Arby’s and its present, former, and future parents, subsidiaries, affiliates, divisions, successors, predecessors, assignors, assignees, and assigns, and each of their respective present, former or future officers, directors, shareholders, partners, members, insurers, employees, associates, agents, acquirers, processors, representatives, attorneys, and accountants (collectively, “Arby’s Released Persons”), and to have irrevocably released and forever discharged the Arby’s Released Persons from and for, any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys’ fees, losses, expenses, obligations, or demands, of any kind whatsoever, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they ever had, now have, or may claim now or in the future to have, that (i) were alleged or asserted against any of the Arby’s Released Persons in the Financial Institutions Complaint or could have been alleged or asserted against any of the Arby’s Released Persons in the Financial Institutions Complaint; (ii) arise out of the same nucleus of operative facts as any of the claims alleged or asserted in the

Financial Institutions Complaint; or (iii) arise out of or relate to the Intrusion (“Plaintiff Released Claims”).

17. As of the Effective Date, Arby’s shall be deemed to have waived any right to assert against the Settlement Class Representatives, the other Settlement Class Members, and Settlement Class Counsel (“Plaintiff Released Persons”), and to have irrevocably released and forever discharged the Plaintiff Released Persons from and for, any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys’ fees, losses, expenses, obligations, or demands, of any kind whatsoever, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which it ever had, now has, or may claim now or in the future to have, relating to the institution or prosecution of the Action (“Arby’s Released Claims”).

18. “Unknown claims” means claims that Arby’s and the Plaintiff Releasing Persons do not know or suspect to exist in their favor as of the entry of this Final Judgment, which if known by them might have affected their settlement of the Action. Upon the Effective Date, Arby’s and each of the Plaintiff Releasing Persons shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by section 1542 of

the California Civil Code, or by any law of any state or territory of the United States, federal law, or principle of common law which is similar, comparable, or equivalent to section 1542 of the California Civil Code, the provisions, rights, and benefits of any statute or law which might otherwise render a general release unenforceable with respect to unknown claims. Section 1542 of the California Civil Code reads:

Section 1542. Release. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Upon the Effective Date, Arby's and each of the Plaintiff Releasing Persons shall be deemed to have acknowledged that such party is aware that such party may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Plaintiff Released Claims and Arby's Released Claims, but that it is such party's intention to have, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Plaintiff Released Claims and Arby's Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

19. Arby's is hereby enjoined from prosecuting in any proceeding against any of the Plaintiff Released Persons any Arby's Released Claim or any other claim based on any actions taken by any of the Plaintiff Released Persons that are authorized or required by the Settlement Agreement or by this Final Judgment. Each Plaintiff Releasing Person is hereby enjoined from prosecuting in any proceeding against any of the Arby's Released Persons any Plaintiff Released Claim or any other claim based on any actions taken by any of the Arby's Released Persons that are authorized or required by the Settlement Agreement or by this Final Judgment. The Settlement Agreement and/or this Final Judgment may be pleaded as and shall operate as a complete defense to any such proceeding.

20. This Final Judgment shall not be construed either as an admission or concession by Arby's of the truth of any allegations in the Financial Institution Complaint or of any liability, fault, or wrongdoing of any kind or as an admission or concession by the Settlement Class Representatives or the other Settlement Class Members as to any lack of merit of the claims in the Financial Institution Complaint.

21. Nothing contained herein, or in any document or instrument contemplated by the Settlement, is to be construed as an admission of wrongdoing or liability by any party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Parties have entered into the Settlement

Agreement solely as a compromise of all claims in the Action for the purpose of concluding the Action and the Settlement Agreement may not be used by any third party against any Party. Pursuant to Fed. R. Evid. 408, the entering into and carrying out of the Settlement Agreement and any negotiations or proceedings related to it shall not be construed as or deemed evidence of an admission or concession by any of the Parties or a waiver of any applicable statute of limitations and shall not be offered or received into evidence in any tribunal for any purpose whatsoever.

22. Notwithstanding the foregoing, nothing in this Final Judgment shall be interpreted to prohibit the use of this Final Judgment in a proceeding to consummate or enforce the Settlement Agreement or this Final Judgment or to defend against the assertion of Plaintiff Released Claims or Arby's Released Claims in any other proceeding, or as otherwise required by law.

23. The Settlement Class Representatives have requested that Service Payments be approved and paid to them in recognition of their services provided for the benefit of the Settlement Class. The Settlement Agreement provides for an award of Service Payments as part of the maximum \$2,312,864 to be paid by Arby's for attorneys' fees, costs, and expenses and Service Payments. The Court, having reviewed the request for Service Payments, as well as the supporting memorandum and associated papers, hereby finds that a Service Payment to each Settlement Class Representative

in the amount of \$[amount not to exceed \$10,000] is fair, reasonable, and appropriate in light of the service each Settlement Class Representative has provided on behalf of and for the benefit of the Settlement Class, and hereby approves a Service Payment to each Settlement Class Representative in such amount. The Service Payments shall be paid in accordance with the terms of the Settlement Agreement.

24. The Settlement Class Representatives have moved for an award for attorneys' fees and reimbursement of costs and expenses to Settlement Class Counsel. Pursuant to Rules 23(h)(3) and 54(d) of the Federal Rules of Civil Procedure and having reviewed the Fee Request, supporting memorandum, and associated papers, and having considered the factors for assessing the reasonableness of a class action fee request, the Court makes the following findings of fact and conclusions of law:

(a) The Settlement confers benefits on the Settlement Class that are substantial when assessed in light of the risk of establishing liability and damages in this case;

(b) There were ____ objections by Settlement Class Members to the requested fee award. [Disposition of objections.];

(c) Settlement Class Counsel have effectively and efficiently prosecuted this difficult and complex class action on behalf of members of the Settlement Class

on a wholly contingent basis and with no guarantee they would be compensated for the significant time, resources, and expenses devoted to prosecuting the case;

(d) Settlement Class Counsel undertook numerous and significant risks of nonpayment in connection with the prosecution of this action on behalf of the Settlement Class;

(e) Settlement Class Counsel have reasonably expended over ___ hours and incurred substantial out-of-pocket expenses in prosecuting this action with no guarantee of recovery;

(f) The Settlement, which reflects a very successful outcome on behalf of the Settlement Class, was achieved for the benefit of the Settlement Class as a direct result of Settlement Class Counsel's skillful advocacy and high-quality work on behalf of the Settlement Class;

(g) The Settlement was reached following negotiations held in good faith, in the absence of collusion, and in significant part under the supervision of a highly skilled mediator, Hunter R. Hughes III;

(h) Settlement Class Members were advised in the Notices, which Notices were approved by this Court, that the Settlement Class Representatives intended to move for an award of attorneys' fees, costs, and expenses and an award of Service Payments to the Settlement Class Representatives in an aggregate amount up to

\$2,312,864, which would be paid by Arby's, separate and apart from the benefits to Settlement Class Members provided under the Settlement Agreement;

(i) The Settlement Class Representatives have moved for an award of attorneys' fees, costs, and expenses in the amount of \$[amount not to exceed 2,312,864 minus the amount of the Service Payments Request], which motion has been on the docket and publicly available since _____. The hourly rates used by Settlement Class Counsel in calculating lodestar and the number of hours expended in prosecuting the case for the benefit of the Settlement Class are reasonable, as is the lodestar amount submitted by Settlement Class Counsel, which the Court has considered as one factor in evaluating the Fee Request. The costs and expenses necessarily incurred by Settlement Class Counsel as shown in the Settlement Class Representatives' request for an award of attorneys' fees, costs, and expenses are reasonable.

25. Accordingly, in consideration of the foregoing, the Settlement Class Representatives are hereby awarded attorneys' fees, costs, and expenses for Settlement Class Counsel in the amount of \$[amount not to exceed 2,312,864 minus the amount awarded to Settlement Class Members as Service Payments]. The Court finds this award to be fair and reasonable. The awarded fees and expenses shall be paid in accordance with the terms of the Settlement Agreement.

26. Arby's shall not be responsible for any distribution of the attorneys' fees, costs, and expenses or Service Payments or for any failure to make such distribution.

27. At any time after entry of this Final Judgment, the Settlement Agreement may, with approval of the Court, be modified by written agreement of Arby's Counsel and Settlement Class Counsel in their discretion without giving any additional notice to the Settlement Class, provided that such modifications do not limit the rights of the Settlement Class Members under the Settlement Agreement.

28. The Court hereby dismisses the Financial Institution Complaint with prejudice and without fees or costs to any Party except as provided in this Final Judgment.

29. If the Settlement Agreement is terminated in accordance with Section 8.1 of the Settlement Agreement, this Final Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever.

30. If the Settlement Agreement is terminated in accordance with Section 8.1 of the Settlement Agreement, the Settlement Agreement shall have no effect on the rights of the Parties or the Class Members to prosecute or defend the Action or any other action and, subject expressly to the reservation and preservation of rights and defenses, all Parties and Class Members shall be restored to their respective positions as of November 13, 2019. In such event, the Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection

herewith shall be without prejudice to the Parties, except as expressly provided in the Settlement Agreement, and shall not be deemed or construed to be an admission or confession by or against any Party of any fact, matter, or proposition of law, whether in the Action or otherwise.

31. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

32. Without affecting the finality of this Final Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes, including enforcement of any of its terms at the request of any party and resolution of any disputes that may arise relating in any way to, or arising from, the implementation of the Settlement Agreement or the implementation of this Final Judgment.

33. This Final Judgment shall constitute a judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

34. Pursuant to Federal Rule of Civil Procedure 54(b), the Court determines that there is no just reason for delay and expressly DIRECTS that this Final Judgment be, and hereby is, entered as a final and appealable order.

IT IS SO ORDERED.

Dated: _____, 2020

William M. Ray II
United States District Judge

EXHIBIT 3

**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

**[PROPOSED] 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
1700 K. Street, NW
Suite 650
Washington, DC 20006

Karen Hanson Riebel
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900

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)	[Insert: PAO + 7]
Last day for establishment of settlement website and toll-free number and for sending Mail Notice (28 days after Preliminary Approval Order)	[Insert: PAO + 28]
Last day for Settlement Class Representatives and Settlement Class Counsel to file Application for fees and service payments (21 days prior to objection deadline)	[Insert: PAO + 84]
Last day for Class Members to opt out of Settlement (90 days after Preliminary Approval Order)	[Insert: PAO + 90]
Objection Deadline (105 days after Preliminary Approval Order)	[Insert: PAO + 105]
Claims Deadline	[Insert: PAO + 120]
Last day for submissions in support of final approval (30 days prior to Final Approval Hearing)	[Insert: FAH – 30]
Last day to file declaration of Settlement Administrator and Opt-Outs Report (14 days prior to Final Approval Hearing)	[Insert: FAH – 14]
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)	[Insert: FAH – 7]

Final Approval Hearing (a date to be set by the Court no earlier than 140 days after entry of this Order)	[Insert: FAH]
--	---------------

Dated: _____, 2020

William M. Ray II
United States District Judge

EXHIBIT 4

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*, 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.

YOUR FINANCIAL INSTITUTION'S LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	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.
EXCLUDE YOURSELF	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.

Questions? Call **[TOLL-FREE NUMBER]** or visit **[SETTLEMENT WEBSITE]**

OBJECT	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.
DO NOTHING	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.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....##

1. Why did I get this notice package?
2. What is the lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?

WHO IS PART OF THE SETTLEMENT.....##

5. How do I know if my financial institution is covered by the settlement?
6. Are there exceptions to being covered by the settlement?
7. I'm still not sure if my financial institution is part of the settlement.

THE SETTLEMENT BENEFITS.....##

8. What does the settlement provide?
9. How much will my financial institution's payment be?

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

10. How can my financial institution get a payment?
11. When would my financial institution get its payment?
12. What is my financial institution giving up to get a payment or remain in the Settlement Class?

EXCLUDING YOUR FINANCIAL INSTITUTION FROM THE SETTLEMENT.....##

13. How can my financial institution opt out of the settlement?
14. If my financial institution doesn't exclude itself, can it sue Arby's for the same thing later?
15. If my financial institution excludes itself, can it get money from this settlement?

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

THE LAWYERS REPRESENTING YOUR FINANCIAL INSTITUTION.....##

- 16. Does my financial institution have a lawyer in the lawsuit?
- 17. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT.....##

- 18. How does my financial institution tell the Court that it doesn't like the settlement?
- 19. What's the difference between objecting and excluding/opting out?

THE COURT'S FINAL APPROVAL HEARING.....##

- 20. When and where will the Court decide whether to approve the settlement?
- 21. Does my financial institution have to attend the hearing?

IF YOU DO NOTHING.....##

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

GETTING MORE INFORMATION.....##

- 23. How do I get more information?

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*, 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

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

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.

Questions? Call **[TOLL-FREE NUMBER]** or visit **[SETTLEMENT WEBSITE]**

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 [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE] 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 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.

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

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 [SETTLEMENT WEBSITE]. Read the Claim Form carefully, include all information the form asks for, sign it, and file it through [SETTLEMENT WEBSITE] by [DATE] or mail it postmarked no later than [DATE] to the Settlement Administrator at [ADDRESS]. 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 [DATE] 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 [SETTLEMENT WEBSITE] for updates on the progress of the settlement. Please be patient.

12. What is my financial institution giving up to get a payment or 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 [SETTLEMENT WEBSITE].

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

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

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*;
- 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 [DATE], to:

[SETTLEMENT ADMINISTRATOR]

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 [DATE].

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 institute 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.

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

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.

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 [21 days before objections deadline]. This request will be available on the settlement website ([SETTLEMENT WEBSITE]) (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).

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

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 [SETTLEMENT WEBSITE]).

Any objection must be either filed electronically with the Court no later than [DATE] or mailed to these three different places, postmarked no later than [DATE]:

Court	Settlement Class Counsel	Defense Counsel
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 PLLP 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

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 [TIME] on [DATE] 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 ([SETTLEMENT WEBSITE]) for notice of any changes.

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

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 in the Settlement Agreement itself. You can get a copy of the Settlement Agreement at [SETTLEMENT WEBSITE].

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

EXHIBIT 5

LEGAL NOTICE

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 could get a payment from a class action settlement.

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

A class action settlement has been proposed to resolve a lawsuit against Arby's Restaurant Group, Inc. ("Arby's") being pursued by certain financial institutions ("Plaintiffs") as a result of computer hackers installing malware on the point-of-sale systems at certain Arby's locations, as announced by Arby's in February 2017 (the "Arby's Intrusion"). If your financial institution ("you") is covered by the settlement, you may be able to get benefits from, and object to, the settlement. Or you can exclude yourself from the settlement. The United States District Court for the Northern District of Georgia authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the settlement.

WHO'S INCLUDED?

You are a member of the class and covered by the settlement if:

- (1) You are a financial institution based in the United States (including its territories); and
- (2) You issued one or more 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.

WHAT'S THIS CASE 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 negligence. No court or other entity has made any judgment or other determination as to any wrongdoing or negligence by Arby's.

WHAT CASH BENEFITS DOES THE SETTLEMENT PROVIDE?

Arby's has agreed to pay, on a claims-made basis, up to \$1,439,888 to be distributed to settlement class members based on their eligible 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 based on their other eligible accounts ("Assessed Payment Card Accounts").

The maximum payments for Non-Assessed Payment Card Accounts and for Assessed Payment Card Accounts 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 the total number of your Non-Assessed Payment Card Accounts multiplied by \$2.00 per account; plus (2) seventy-eight percent (78%) of the total number of your Assessed Payment Card Accounts multiplied by \$0.32 per account, if the settlement becomes effective.

Arby's will also pay the charges of the settlement administrator for notifying the class members and administering the settlement. Separate and apart from the above payments, Arby's has also agreed to pay no more than \$2,312,864 for service payments to the settlement class representatives and attorneys' fees, costs, and expenses of their counsel, if the settlement becomes effective.

HOW DO YOU ASK FOR A PAYMENT?

A detailed notice and claim form package contains everything you need. Just call the number or visit the website below to get one. To qualify for a payment, you must send in a claim form. **Claim forms are due by [DATE].**

WHAT ARE YOUR OTHER OPTIONS?

If you don't want to be legally bound by the settlement, you must exclude yourself by [DATE]; otherwise, if the settlement becomes effective, you won't be able to sue, or continue to sue, Arby's concerning the legal claims released by the settlement. If you exclude yourself, you can't get money from the settlement. If you stay in the settlement, you may object to it by [DATE]. The detailed notice explains how to exclude yourself or object.

The Court will hold a hearing in this case, *In re Arby's Restaurant Group, Inc. Data Security Litigation*, No. 1:17-cv-514 (N.D. Ga.), on [DATE], to consider whether to approve the settlement and a request by the settlement class representatives for service payments and for their counsel's attorneys' fees, costs, and expenses for litigating the case and negotiating the settlement. The fees and costs that may be awarded under the settlement won't reduce the payments available to the settlement class members if the settlement becomes effective. If you are covered by the settlement, you may ask to appear at the hearing, but you don't have to. For more information, call toll-free at [TOLL-FREE NUMBER], visit the website at [SETTLEMENT WEBSITE], or write to [SETTLEMENT ADMINISTRATOR].

Questions? Call [TOLL-FREE NUMBER] or visit [SETTLEMENT WEBSITE]

EXHIBIT B

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-514-WMR
Case No. 1:17-mi-55555-WMR**

**CONSOLIDATED FINANCIAL
INSTITUTION CASE**

**DECLARATION OF KAREN HANSON RIEBEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF REASONABLE
ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE
SERVICE PAYMENTS**

I, Karen H. Riebel, hereby declare and state as follows:

1. I am over the age of twenty-one and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct. The Honorable Amy Totenberg appointed James J. Pizzirusso, Brian C. Gudmundson and me Co-Lead Counsel on June 1, 2017 (ECF No. 53), and the Court appointed us Settlement Class Counsel on March 5, 2020, in its order preliminarily approving the settlement and directing notice to the settlement class. (ECF No. 295 ¶ 3.)

2. I have extensive experience in complex class action litigation. I am a partner at Lockridge Grindal Nauen P.L.L.P. (LGN) where I have concentrated my practice in the areas of data breach, antitrust and securities class action litigation since joining the firm in 1992. I have been appointed Co-Lead Counsel or Liaison

Counsel in four data breach cases and have served on the Executive Committee on seven others. I have also worked on numerous securities and antitrust class actions and LGN has served as lead or co-lead counsel in many complex cases across the country. *See* ECF No. 293-4; ECF No. 41-4 (resume submitted in support of interim class counsel appointment).

3. James J. Pizzirusso is a partner at Hausfeld LLP and has extensive experience in data breach litigation. He has served as Co-Lead Counsel in three data breach class actions and has served on Executive/Steering Committees in six others. He has also served as Lead Counsel or on Steering Committees in numerous other class action cases. In addition to his breadth of experience and knowledge in data breach litigation, Mr. Pizzirusso also practices in the areas of consumer protection, antitrust, environmental, and sports and entertainment law. *See* ECF No. 41-5 (resume submitted in support of interim class counsel appointment).

4. Co-Lead Counsel Brian Gudmundson is a partner at Zimmerman Reed, LLP, focusing his practice on data breach, consumer, antitrust, securities, intellectual property, and sports litigation. He has served as Co-Lead Counsel in two data breach class actions, has served on Executive/Steering Committees in six others, and served in a leadership capacity in numerous other consumer, sports, and antitrust matters.

See ECF No. 41-6 (resume submitted in support of interim class counsel appointment).

5. Arby's suffered a data breach (the "Data Breach") between August 12, 2016 and January 13, 2017, during which computer hackers installed malicious software on Arby's point-of-sale ("POS") systems, stealing debit and credit data from the magnetic stripes on the payment cards swiped by consumers on Arby's' POS systems. On May 19, 2017, Plaintiffs filed a consolidated class action complaint on behalf of themselves and a national class of financial institutions that had issued debit or credit cards used at Arby's restaurants during the period affected by the Data Breach. (ECF No. 51.) Plaintiffs asserted claims for negligence, negligence per se, and a claim for declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* asserting Arby's' failure to implement and maintain adequate security measures resulted in the Data Breach which caused them significant losses. On June 19, 2017, Arby's filed a motion to dismiss the consolidated class action complaint (ECF No. 57), which the Court denied on March 5, 2018. (ECF No. 139.) Plaintiffs then filed their First Amended Consolidated Class Action Complaint on August 3, 2018. (ECF No. 190.)

6. On June 10, 2019, after extensive discovery and motion practice, the parties reached an agreement to pursue mediation and explore settlement. After

being granted a motion to stay (ECF Nos. 476; 284), the parties attended a mediation with Hunter R. Hughes on September 5, 2019. Following the mediation, the parties filed and the Court granted another joint motion to stay (ECF Nos. 482; 286), giving the parties an additional forty-five days to negotiate settlement. In November 2019, after a total of five months of extensive arm's length negotiations, the parties reached settlement ("Settlement"). On March 5, 2020, the Court granted Preliminary Approval of the Settlement. (ECF No. 295.)

7. The Settlement compensates financial institutions that issued payment cards affected by the Data Breach ("Settlement Class Members"). These payment cards, defined as "Alerted-On Payment Cards," are payment cards identified by Visa or MasterCard in an alert in the US-2017-0057 series in the case of Visa or the ADC002618 series in the case of MasterCard. *See* Settlement Agreement ("SA") ¶ 1.4.

8. Alerted-On Payment Cards correspond to accounts falling in to two categories: Assessed Payment Card Accounts and Non-Assessed Payment Card Accounts. Assessed Payment Card Accounts refer to accounts affected by the Data Breach for which Visa and/or MasterCard has already issued an Assessment. *See* (SA, ¶¶ 1.12, 1.34.) An Assessment refers to the payment Visa or MasterCard required Arby's to pay to a Settlement Class Member with respect to a particular

Assessed Payment Card Account prior to the Settlement. The Settlement requires Defendant to compensate Settlement Class Members up to a total of \$1,547,248.00 with respect to their Assessed Payment Card Accounts. (SA, ¶ 1.34.)

9. Relatedly, the Settlement has helped facilitate the distribution of the Visa assessment, which is valued at \$16,458,245.73 to the Settlement Class Members, through a provision whereby “Arby’s agrees not to take any action against Visa seeking to prevent Visa from distributing the Visa Assessment to Settlement Class Members.” (SA, ¶ 5.5.)¹

10. Non-Assessed Payment Card Accounts are accounts affected by the Data Breach for which Visa and/or MasterCard has not paid an assessment to the Settlement Class Member. Specifically, for Settlement Class Members that are Visa issuers, Non-Assessed Card Accounts are accounts that received a CAMS alert from Visa between August 11, 2016 and February 7, 2017. (SA, ¶¶ 1.35; 1.47.) For Settlement Class Members that are MasterCard issuers, Non-Assessed Card Accounts are accounts: that received an alert in the ADC series from MasterCard

¹ On May 19, 2020, Visa, Inc. filed an *amicus curiae* brief arguing that the \$16,458,245.73 provided by the Visa Assessment had, in fact, not been secured by the parties, as Arby’s had filed a third-party complaint against Visa in *Banc of America Merchant Services, LLC v. Arby’s Restaurants Group, Inc.*, No. 20-CVS-426 (N.C. Super. Ct., Mecklenburg Cty.) arguing the Assessment was unlawful and should be returned to Arby’s. (ECF No. 494-1.) Plaintiffs addressed this issue in their response. (ECF No. 500.)

between August 12, 2016 and February 8, 2017; associated with payment cards that were not EMV-enabled when used at an Arby's POS system; or were issued by Settlement Class Members that did not enroll in the MasterCard ADC program for the calendar year 2017. *Id.* The Settlement requires Defendant to compensate Settlement Class Members up to a total of \$1,439,888.00 with respect to their Non-Assessed Payment Card Accounts. (SA, ¶ 1.33.)

11. Only after their substantial negotiations regarding the material terms of the Settlement did Settlement Class Counsel begin to engage in additional arms-length negotiations concerning an appropriate amount for Attorneys' Fees and Expenses, as well as Service Payments to the Settlement Class Representatives. At the conclusion of these negotiations, Settlement Class Counsel agreed to a proposed award of attorneys' fees and reimbursement of expenses in the amount of \$2,312,864 ("Attorneys' Fees and Expenses"), to include a proposed incentive award of \$10,000 per Settlement Class Representative ("Service Award"), to be paid by Defendant. These awards are separate and apart from and will not affect the total amount Defendants are required pay in order to satisfy the approved Settlement Class claims. (See SA, ¶¶ 1.33, 1.34, 1.60, 5.5, 7.3.) Defendants do not object to this application. (See SA, ¶ 7.2.)

12. The Settlement requires Arby's to pay the costs associated with or arising from claims administration and the Notice Plan. (SA, ¶¶ 1.17, 5.32). Because providing notice to the class and administering the Settlement is necessarily a lengthy and time-consuming process, the Parties have determined this aspect of the Settlement provides the Settlement Class a benefit worth \$300,000.

13. Settlement Class Counsel have invested time and labor into this case significantly in excess of the \$1,872,934.44 they are seeking as Attorneys' Fees in connection with this Settlement. Settlement Class Counsel responded to, and prevailed against, Defendant's Motion to Dismiss. As the case progressed, Settlement Class Counsel participated in a variety of discovery disputes, and were ultimately able to serve extensive discovery requests while deposing thirteen individuals associated with Defendant and three others associated with third parties. Similarly, Settlement Class Counsel responded to numerous discovery requests and defended the depositions of each named Plaintiff. Later, and as discussed above, Settlement Counsel engaged in extensive arms-length negotiations lasting months to achieve the Settlement.

14. Through these efforts, Settlement Class Counsel worked over 17,000 hours in this case. Through their motion, however, Plaintiffs only seek compensation for an adjusted 12,001.47 hours in this case, for a lodestar calculated at their

customary rates of \$6,792,553.00. Indeed, the hourly rates of Settlement Class Counsel and attorneys at their firms ranged from \$150 to \$1150, which is commensurate with the hourly rates of attorneys in similar class action data breach cases venued in the United States District Court for the Northern District of Georgia. *See, e.g., In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-md-02583-TWT, Doc. No. 227-1 (filed June 27, 2016) (hourly rates for attorneys ranging from \$350 to \$750); *In Arby's Restaurant Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-01035-WMR, Doc. Nos. 188-2, 188-3, 188-4, 188-5 (filed May 7, 2019) (hourly rates for attorneys ranging from \$350 to \$950); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, Doc. No. 858-1 (filed October 29, 2019) (hourly rates for attorneys ranging from \$212.50 to \$1,050.00) Even if the fee were calculated at \$300/hour for every attorney/hour invested in the case, the total would exceed \$3.5 million.

15. Plaintiffs' Attorneys also advanced \$409,929.56 in expenses. In seeking Attorneys' Fees of \$1,872,934.44, this amount represents only 27.57% of counsel's total lodestar, a very substantial discount on the customary fee. Detailed time reports showing these lodestar and expense numbers are available for *in camera* inspection at the Court's request.

16. The adjusted figure of 12,001.47 hours does not reflect approximately 5,741 hours, with an approximate lodestar of \$1,722,300.00, spent by attorneys on document review and coding because Plaintiffs' vendor lost a significant chunk of their work product while the case was stayed for mediation. Plaintiffs' vendor agreed to compensate Plaintiffs \$125,000 for these losses and, as such, Plaintiffs do not seek to include those hours in the Court's analysis here.

17. The \$409,929.56 Settlement Counsel incurred in expenses resulted from expenditures necessarily incurred in litigation and consistently charged to hourly clients. These expenses included litigation assessment, court costs, experts/consultants, federal express, hearing transcripts, investigation, Lexis/Westlaw, messenger/delivery, photocopies – in house, photocopies outside, postage, service of process, special supplies, telephone/telecopier, travel and miscellaneous costs.

18. Spending more than 17,000 hours litigating and settling this case necessarily precluded lawyers with the experience and skill of Settlement Class Counsel from engaging in other cases. This case was complex and presented difficult issues. Settlement Class Counsel understood that litigating this case would require substantial time and money, creating a significant risk they would forego any compensation. Additionally, the relationship between a class action plaintiff

and counsel is unlikely to lead to repeat business or ongoing retainers, as might be the case where counsel represents a business or wealthy client.

19. The requested Attorneys' Fees and Expenses and the requested Service Payment are substantially less than the awards that have been approved with respect to other similar cases and are substantially less than the time and expenses spent on this case by Settlement Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 2020.

Dated: May 28, 2020

s/ Karen Hanson Riebel
Karen Hanson Riebel
(admitted pro hac vice)
LOCKRIDGE GRINDAL NAUEN
P.L.L.P.
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
khriebel@locklaw.com