

**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 CONSUMER CASE

Case No. 1:17-cv-1035-WMR

**ORDER CERTIFYING A SETTLEMENT CLASS,
PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
AND DIRECTING NOTICE TO THE CLASS**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of Class for Settlement.

Plaintiffs filed a Consumer Plaintiffs' First Amended Consolidated Class Action Complaint against Arby's Restaurant Group, Inc. ("Arby's") on March 19, 2018, in which Plaintiffs asserted claims for breach of implied contract, negligence, negligence per se, unjust enrichment, declaratory judgment, violation of the Georgia Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., violations of the Connecticut Unfair Trade Practices Act, C.G.S. §§ 42-110a et seq., violations of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq., and

violation of the Tennessee Consumer Protection, Tenn. Code Ann. §§ 47-18-101 et seq.¹

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm's-length negotiations and a mediation overseen by Ralph Levy and ensuing settlement negotiations between the Parties. The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the settlement ("Settlement"), which, if approved, will result in dismissal of this action with prejudice.

Having reviewed the Settlement Agreement (Doc. 169-2 at 2-41), and the Amendment to Settlement Agreement (Doc. 175-1 at 2-6) (together, the "Settlement Agreement"), including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiff's Motion for Preliminary Approval is granted as set forth herein.²

¹ The Court dismissed the Consumer Plaintiffs' Connecticut Unfair Trade Practices Act, Florida Deceptive and Unfair Trade Practices Act, and Tennessee Consumer Protection Act claims as redundant of the Georgia Fair Business Practices Act claim. (Doc. 146 at 11.)

² Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e), the Court provisionally certifies a class in this matter (the “Class”) defined as follows:

All persons residing in the United States who used a debit or credit card to make a purchase at an Affected Location during its Exposure Window. The Class specifically excludes: (i) Arby’s and its officers and directors; and (ii) the Judge or Magistrate Judge to whom the action is assigned and, any member of those Judges’ staffs or immediate family members.³

The Court provisionally finds, for settlement purposes only, that: (a) the Class is so numerous that joinder of all Class Members would be impracticable; (b) there are issues of law and fact common to the Class; (c) the claims of the Representative Plaintiffs are typical of and arise from the same operative facts and seek similar relief as the claims of the Class Members; (d) the Representative Plaintiffs and Lead Counsel and Class Counsel will fairly and adequately protect the interests of the Class as the Representative Plaintiffs have no interest antagonistic to or in conflict with the Class and have retained experienced and competent counsel to prosecute

³ The exposure windows relating to each affected Arby’s restaurant have varying durations ranging between October 8, 2016 and January 12, 2017. The “Affected Locations” and their respective “Exposure Windows” are those listed in the public notification to consumers of the data breach posted by Arby’s on April 14, 2017, at <http://arbys.com/security> (“Locations” tab).

this matter on behalf of the Class; (e) questions of law or fact common to 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 this controversy.

2. Representative Plaintiffs and Class Counsel.

Plaintiffs Jacqueline Weiss, Joseph Weiss, Ashley Russell, Brett Barnes and Burnell Rutters are hereby provisionally designated and appointed as the Representative Plaintiffs. The Court provisionally finds that the Representative Plaintiffs are similarly situated to absent Class Members and therefore typical of the Class and that they are adequate representative plaintiffs.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as “Class Counsel” pursuant to Federal Rule of Civil Procedure 23(g): Roy E. Barnes, John R. Bevis and J. Cameron Tribble of Barnes Law Group, LLC and Stuart J. Guber and Timothy J. Peter of Faruqi & Faruqi, LLP as Lead Counsel and John A. Yanchunis and Marisa Glassman of Morgan & Morgan Complex Litigation Group, and James M. Evangelista and David J. Worley of Evangelista Worley LLP, together with Lead Counsel, as Class Counsel.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Class and accordingly is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on June 4, 2019 at 10:00 a.m. in Courtroom 1705 of the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, Atlanta, GA 30303, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e); (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e); (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Class Counsel for an award of attorneys' fees and costs and expenses should be approved pursuant to Federal Rule of Civil

Procedure 23(h); and (f) the motion of Representative Plaintiffs for service awards should be approved.

The Representative Plaintiffs will cause to be filed with the Court their briefs in support of final approval, attorneys' fees, costs, and expenses, and service awards, including responses to any objections, no later than twenty-one (21) days before the Final Approval Hearing.

6. **Administration.** The Court appoints KCC Class Action Services, LLC as the Settlement Administrator, with responsibility for class notice and claims administration. Defendant shall pay all the Costs of Settlement Administration. These payments to the Settlement Administrator shall be made separate and apart from the relief being made available to Settlement Class Members under the Settlement.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, and the Claim Form, Publication Notice, and Long Form Notice attached to the Amendment to Settlement Agreement as Exhibits A, B, and C, respectively, satisfy the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and (e)(1) and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement

Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

By 45 days from the date of entry of this Order, the Settlement Administrator shall initiate the Notice Program, which shall be completed in the manner set forth in the Settlement Agreement.

8. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 7 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Class; (b) are reasonably calculated to apprise Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and the Court concludes that the Notice Program meets all applicable requirements of law, including Federal Rule of Civil Procedure 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

10. **Class Action Fairness Act Notice.** Defendant shall provide 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. No later than fourteen (14) Days before the Final Approval Hearing, Defendant shall file with the Court a certification that it complied with the CAFA Notice requirements and stating the date of such compliance.

11. **Exclusion from Class.** Any Class Member wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written opt out notice must clearly manifest a person’s intent to be excluded from the Settlement Class. The written opt out notice must include the individual’s name and address; a statement that he or she wants to be excluded from the Settlement Class; and the individual’s signature. To be effective, written opt out notice must be postmarked no later than 120 days after the date of entry of this Order. No later than 130 days from the date of entry of this Order, the Settlement Administrator shall provide the Parties with: (a) copies of all completed opt-out notifications, and (b) a final list of all who have timely and validly excluded themselves from the Settlement Class (the “Opt-Out Members”). No later than 10 days prior to the final approval hearing, Class Counsel shall file this list of Opt-Out

List Members with the Court for purposes of being attached to the Judgment to be entered upon final approval.

All Class Members who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of or be bound by the terms of this Settlement Agreement. All Class Members who submit valid and timely notices of their intent to be excluded from the Settlement Class shall also waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement. All Class Members who do not submit valid and timely notices of their intent to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Judgment entered thereon.

12. **Objections and Appearances.** A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, including the request for costs, expenses, service awards, and/or attorneys' fees.

Any Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection ("Objection"). Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection; (iv) if you are represented by

counsel, the identity of all counsel representing you; (v) a statement confirming whether you intend to personally appear and/or testify at the final fairness hearing, and, if you have counsel representing you, whether your counsel will personally appear to participate in the final fairness hearing; (vi) if you or your counsel anticipate calling witnesses to testify at the final fairness hearing in support of the objection, a list of all persons who you or your counsel will call; and (vii) your signature and the signature of your duly authorized attorney or other duly authorized representative, if applicable.

To be timely, written notice of the Objection in the appropriate form must be mailed (and postmarked) or otherwise submitted to the Clerk of the Court, as follows:

a) For an Objection to the Settlement(which may include an objection to the request for costs, expenses, service awards, and/or attorneys' fees, and to the extent it does, shall be without prejudice to any Objection under subparagraph (b) below), no later than 120 days from the date of entry of this Order,

b) For an Objection addressing the later application for costs, expenses, service awards, and/or attorneys' fees (which may be made without regard to whether the Objector earlier made any Objection addressing costs, expenses, service awards and/or attorneys fees under subparagraph (a) above), no later than 14 days

after the motion making the application for costs, expenses, service awards, and/or attorneys' fees, and

c) In each case the Objection must be served concurrently therewith upon Class Counsel, John A. Yanchunis, Morgan & Morgan Complex Litigation Group, 201 N. Franklin Street, 7th Floor, Tampa, FL 33602; and counsel for Arby's, Douglas H. Meal, Ropes & Gray LLP, 800 Boylston Street, Boston, MA 02199.

Any Settlement Class Member who fails to timely mail or otherwise submit a written Objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to the Settlement Agreement, as detailed above and in the Long-Form Notice, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

Any Settlement Class Member who does not make a timely Objection in complete accordance with this Order and the Long Form of Notice shall not be treated as having made a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

13. **Claims Process and Distribution Plan.** Representative Plaintiffs and Arby's have created a process for assessing and determining the validity and value of claims and a methodology for distribution of benefits to Settlement Class

Members on Approved Claims (“Claims Process and Distribution Plan”), as set out in the Settlement Agreement. The Court preliminarily approves the Claims Process and Distribution Plan described in the Settlement Agreement (including the exhibits thereto), and directs that the Settlement Administrator implement the Claims Process and Distribution Plan and effectuate the distribution of settlement benefits to Settlement Class Members according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a claim shall do so in accordance with the requirements and procedures specified in the notice and the Claim Form. If 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 notice 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, the releases included in that Agreement, and the final Judgment.

14. **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 immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in

accordance with the Settlement Agreement. In such event, the Settlement Agreement shall become null and void and be of no further force and effect, 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.

15. **Use of Order.** This Order shall be of no force or effect if final Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Arby's of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Representative Plaintiffs or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this Litigation or in any other lawsuit.

16. **Stay of Proceedings.** Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the final Judgment, or until further order of this Court.

17. **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 Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

18. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. The “Preliminary Approval Date” below is the date of entry of this Order. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

Notice Commences:	45 Days from the Preliminary Approval Date	January 14, 2019
Opt-Out Deadline:	120 Days from the Preliminary Approval Date	March 29, 2019
Deadline for Objections to Settlement:	120 Days from the Preliminary Approval Date	March 29, 2019
Motion for Final Approval of Settlement:	28 Days before the Final Approval Hearing	May 7, 2019
Claims Deadline:	180 Days after Commencement of the Notice Program	July 13, 2019
Motion Applying for Service Awards, Attorneys’ Fees and Costs:	28 Days before the Final Approval Hearing	May 7, 2019
Responses to Objections to Settlement:	28 Days before the Final Approval Hearing	May 7, 2019

Objections to the Motion Applying for Service Awards, Attorneys' Fees and Costs:	14 Days after filing of the Motion for Service Awards, Attorneys' Fees and Costs	May 21, 2019
Final Approval Hearing:	180 Days after the Preliminary Approval Date	June 4, 2019

IT IS SO ORDERED this 29th day of November, 2018.



WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE