

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**If your financial institution issued one or more payment cards that was identified as having been at risk as a result of the data breach that Wendy’s announced in 2016, 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 settlement has been proposed to resolve lawsuits against The Wendy’s Company, Wendy’s Restaurants, LLC, and Wendy’s International, LLC (“Wendy’s”) brought by financial institutions and associations as a result of third-party criminal cyberattacks of certain of Wendy’s independently owned and operated franchisee restaurants involving malware variants targeting customers’ payment card information that Wendy’s reported in 2016 (the “Data Breach”).
- The lawsuits, referred to collectively as *First Choice Federal Credit Union v. The Wendy’s Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.), allege that Wendy’s is legally responsible for the Data Breach and assert claims for negligence, negligence per se, violation of the Ohio Deceptive Trade Practices Act, as well as for declaratory and injunctive relief. Wendy’s denies these allegations and says it did not do anything wrong.
- Under the Settlement, Wendy’s will pay \$50 million into a Settlement Fund to be distributed to Settlement Class Members who timely submit valid claims. All Settlement Class Members are eligible to receive a cash payment for each payment card that was identified as having been at risk as a result of the Data Breach in an alert or similar document by Visa, MasterCard, Discover, American Express, or JCB, without providing any documentation of their losses. The amount of the cash payment will depend on the total number of eligible payment cards submitted by Settlement Class Members, the Costs of Settlement Administration, taxes paid on the Settlement Fund, and the amount of attorneys’ fees, costs, and expenses, and Service Awards approved by the Court. By way of example, if valid claims are submitted for all eligible cards, it is estimated that Settlement Class Members would receive approximately \$2.00 per eligible payment card. If, for example, 40% of eligible payment cards are submitted, then Settlement Class Members would receive approximately \$4.80 per eligible payment card. These are examples. The per-card amount actually paid may be higher or lower.
- In addition, Wendy’s has agreed to adopt and/or maintain certain practices related to its data security. If approved by the Court, reasonable attorneys’ fees, costs, and expenses will be paid out of the Settlement Fund. In addition, if approved by the Court, Service Awards of \$7,500 to each class representative that sat for a deposition and \$2,500 to the remaining class representatives will be paid out of the Settlement Fund. Costs of Settlement Administration and any taxes on the Settlement Fund will also be paid out of the Settlement Fund.

***Your financial institution’s legal rights are affected whether you act or don’t act. Read this notice carefully.***

<b>SUBMIT A CLAIM FORM</b>	If eligible, your financial institution will receive a cash payment. This is the only way to get compensation from the Settlement.
<b>EXCLUDE YOUR FINANCIAL INSTITUTION</b>	If you ask to be excluded, you will not receive a cash payment, but you may be able to file your own lawsuit against Wendy’s and its franchisees for the same claims. This is the only option that leaves your financial institution the right to file its own lawsuit against Wendy’s, its franchisees, and/or Defendants’ Released Persons (defined in Settlement) for the claims that are being resolved by the Settlement. In order to be effective, a request to be excluded from the Settlement must include all information required by the Settlement.
<b>OBJECT</b>	Your financial institution can remain in the Settlement Class and file an objection telling the Court why you do not like the Settlement. If your objections are overruled, your financial institution will be bound by the Settlement.
<b>DO NOTHING</b>	If you do nothing, you will not receive any cash payment. If you do nothing, you will also forfeit your right to sue or bring any claim against Wendy’s, its franchisees, and/or Defendants’ Released Persons (defined in Settlement) related to the Data Breach.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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## BASIC INFORMATION

### 1. Why did my financial institution get this notice package?

Your financial institution may have issued payment cards identified in one of the alerts (or a similar document) sent out by the card brands (Visa, MasterCard, American Express, Discover, or JCB) related to the Data Breach.

The Court authorized this notice because you have a right to know about your financial institution's rights under a proposed class action settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a settlement administrator appointed by the Court will make the cash payments that the Settlement allows.

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

The Court in charge of the case is the United States District Court for the Western District of Pennsylvania, and the case is known as *First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.). The financial institutions and associations who sued are called "Plaintiffs," and the company they sued, Wendy's, is the "Defendant."

### 2. What is this lawsuit about?

The lawsuits, referred to collectively as *First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.), allege that Wendy's is legally responsible for the Data Breach and assert claims for negligence, negligence per se, violation of the Ohio Deceptive Trade Practices Act, as well as for declaratory and injunctive relief. The financial institutions seek to recover damages in the lawsuits for the expense of payment card reissuance, amounts paid to cover fraudulent payment card charges, and other costs allegedly incurred as a result of the Data Breach. Wendy's denies any wrongdoing.

### 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. All of these entities together are the "class" or "class members." One court resolves the issues for all class members, except for those who exclude themselves from the settlement class.

### 4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Wendy's. Instead, both sides, with the assistance of a mediator, agreed to the Settlement. The Settlement is not an admission that Wendy's did something wrong, but rather a compromise to end the lawsuits. By agreeing to settle, both sides avoid the costs, risks, and uncertainties of a trial and related appeals, while providing benefits to members of the Settlement Class. The Settlement Class Representatives and the attorneys for the Settlement Class think the Settlement is best for all class members.

## WHO IS PART OF THE SETTLEMENT

### 5. How does a financial institution know if it is part of the settlement?

Your financial institution is a member of the Settlement Class and affected by the Settlement if:

- It is a financial institution, bank, credit union, or other entity in the United States (including its Territories and the District of Columbia); and
- It issued one or more payment cards (including debit and credit cards) that was identified as having been at risk as a result of the Data Breach in an alert or similar document by Visa, MasterCard, Discover, American Express, or JCB, including without limitation: (i) in an alert in the Visa US-2016-0183-PA series (e.g., US-2016-0183a-PA, US-2016-0183b-PA, US-2016-0183c-PA, US-2016-0183d-PA, US-2016-0183e-PA, US-2016-0183f-PA, US-2016-0183g-PA, US-2016-0183h-PA, US-2016-0183i-PA, US-2016-0183j-PA, US-2016-0183k-PA, US-2016-0183l-PA, US-2016-0183m-PA, US-2016-0183n-PA, US-2016-0183o-PA, US-2016-0183p-PA, US-2016-0183q-PA, US-2016-0183r-PA); (ii) in an alert in the MasterCard ADC0099-US-16-1 series and ADC001016-US-16 series (e.g., ADC001016-US-16-1, ADC001016-US-16-2, ADC001016-US-16-3, ADC001016-US-16-4, ADC001016-US-16-5, ADC001016-US-16-6, ADC001016-US-16-7, ADC001016-US-16-8, ADC001016-US-16-9, ADC001016-US-16-10, ADC001016-US-16-11, ADC001016-US-16-12, ADC001016-US-16-13, ADC0099-

Questions? Call 1-888-256-6490 toll free, or visit [www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com)

US-16-2, ADC0099-US-16-3, ADC0099-US-16-4, ADC0099-US-16-5); (iii) in an alert in the Discover DCA-USA-2016-6670, DCA-USA-2016-5283, and DCA-USA-2016-4698 series; (iv) in an alert or similar document by American Express similar to the foregoing Visa and MasterCard alerts; or (v) in an alert or similar document by JCB similar to the foregoing Visa and MasterCard alerts.

Specifically *excluded* from the Settlement Class is the judge presiding over this matter and any members of her judicial staff, Wendy's, and persons who timely and validly request exclusion from the Settlement Class.

## **6. Are there exceptions to being included?**

If your financial institution excludes itself from the Settlement, it is no longer part of the Settlement Class and will no longer be eligible to receive any of the Settlement benefits. This process of excluding your financial institution is also referred to as "opting out" of the Settlement.

## **7. I am still not sure if my financial institution is included.**

If you are still not sure whether your financial institution is included, you can ask for free help. You can call 1-888-256-6490 or visit [www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com) for more information. Or you can fill out and return the Claim Form described in Question 10, to see if you qualify.

## **THE SETTLEMENT BENEFITS**

### **8. What does the settlement provide?**

Wendy's will pay \$50 million (\$50,000,000) into a Settlement Fund to compensate Settlement Class Members, pay the Costs of Settlement Administration and any taxes on the Settlement Fund and, subject to the Court's approval, pay the reasonable attorneys' fees, costs, and expenses of the lawyers who represent the Settlement Class. Service Awards of \$7,500 to each of the 15 class representatives that sat for a deposition and \$2,500 to the remaining three class representatives will also be paid out of the Settlement Fund, if the Court approves. In addition, Wendy's has agreed to adopt and/or maintain certain practices related to its data security.

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

If your financial institution is eligible to participate in the Settlement and does not "opt out" of the Settlement, it may be eligible for benefits under the Settlement. If your financial institution issued any payment cards (including debit and credit cards) that were identified as having been at risk as a result of the Data Breach in an alert (or similar document) by Visa, MasterCard, Discover, American Express, or JCB, it may be eligible for a payment from the \$50 million Settlement Fund.

All Settlement Class Members who file a valid claim are eligible to get a cash payment from the Settlement Fund per each payment card (including debit and credit cards) that was identified as having been at risk as a result of the Data Breach in an alert (or similar document) by Visa, MasterCard, Discover, American Express, or JCB. You are not required to submit any documentation or evidence of your financial institution's losses to receive a payment. The amount of the cash payment will depend on the total number of eligible payment cards submitted by Settlement Class Members, the Costs of Settlement Administration, taxes paid on the Settlement Fund, and the amount of attorneys' fees, costs, and expenses, and Service Awards approved by the Court. By way of example, if valid claims are submitted for all eligible cards, it is estimated that Settlement Class Members would receive approximately \$2.00 per eligible payment card. If, for example, 40% of eligible payment cards are submitted, then Settlement Class Members would receive approximately \$4.80 per eligible payment card. These are examples. The per-card amount actually paid may be higher or lower.

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

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

To qualify for a payment, you must validly complete and submit a Claim Form, which is included with this Notice. You have three options for completing and submitting a Claim Form. You may complete and submit a Claim Form online no later than September 30, 2019, by visiting the Settlement Website ([www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com)); (b) complete and sign and upload the Claim Form no later than September 30, 2019, via the secure link that can be found on the Settlement Website; or (c) complete and sign and submit the Claim Form by mail postmarked by **September 30, 2019**, at the following address:

Wendy's Financial Institution Data Breach Settlement  
c/o Analytics Consulting LLC  
P.O. Box 2005  
Chanhassen, MN 55317-2005

The Settlement Administrator will review your claim to determine the amount of your financial institution's payment.

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

The Court will hold a hearing on November 6, 2019, at 10:00 a.m. to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them takes time, perhaps more than a year. Payments to Settlement Class Members will be made after the Settlement is finally approved and any appeals or other required proceedings have been completed as set forth in the Settlement. You may visit [www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com) 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?**

Unless you exclude your financial institution from the Settlement, your financial institution cannot sue, or be part of any other lawsuit against, Wendy's, its franchisees, or Defendants' Released Persons (as defined in Settlement) relating to the Data Breach. The specific claims your financial institution is giving up against Wendy's and its franchisees are described in the Settlement. The terms of the release are described in Section IX of the Settlement. Read it carefully. The Settlement is available at [www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com).

If you have any questions, you can talk to the law firms listed in Question 16 for free, or you can, of course, talk to your own lawyer if you have questions about what this means.

If your financial institution wants to keep its rights to sue Wendy's and its franchisees based on claims this Settlement resolves, your financial institution must take steps to exclude itself 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?**

To exclude your financial institution from the Settlement, or "opt out," you must send a letter by first class postage prepaid U.S. mail that includes the information in the bullet points below. If you fail to include this information, the notice of exclusion will be ineffective and the Settlement Class Member will be bound by the Settlement, including all releases.

- The name of this Litigation (*First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.));
- Your financial institution's full name, address, and phone number;
- The words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement Class;
- 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 total number of payment cards issued by your financial institution that were identified as having been at risk as a result of the Data Breach in any alerts (or similar documents) by Visa, MasterCard, Discover, American Express, and JCB.

You must mail via first class postage prepaid U.S. mail the completed above-described letter, postmarked no later than **May 28, 2019**, to each of the following addresses:

**Settlement Administrator**  
Wendy's Financial Institution  
Data Breach Settlement  
c/o Analytics Consulting LLC  
P.O. Box 2005  
Chanhassen, MN 55317-2005

**Settlement Class Counsel**  
Erin Green Comite  
SCOTT+SCOTT ATTORNEYS  
AT LAW LLP  
156 South Main Street  
P.O. Box 192  
Colchester, CT 06415

**Defense Counsel**  
Kristine M. Brown  
ALSTON & BIRD LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309

If you ask to be excluded, your financial institution will not get any payment as part of this Settlement, and you cannot object to this Settlement. Your financial institution will not be legally bound by anything that happens in the Settlement and related proceedings. Your financial institution may be able to sue (or continue to sue) Wendy's and its franchisees in the future. If you object to the Settlement and seek to exclude your financial institution, you will be deemed to have excluded your financial institution.

**14. If my financial institution doesn't opt out, can it sue Wendy's or its franchises for the same thing later?**

No. Unless you exclude your financial institution from the Settlement, your financial institution gives up any right to sue Wendy's and its franchisees (as further detailed in the Settlement) for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. Your financial institution must exclude itself from this Settlement to continue its own lawsuit. Remember, the exclusion deadline is **May 28, 2019**.

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

No. If you exclude your financial institution, do not send in a Claim Form asking for a payment.

**THE LAWYERS AND FINANCIAL INSTITUTIONS REPRESENTING YOU**

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

Yes. The Court appointed to represent your financial institution and other members of the Settlement Class the following law firms: Carlson Lynch Sweet Kilpela & Carpenter, LLP, in Pittsburgh, Pennsylvania; and Scott+Scott Attorneys at Law, LLP, in Colchester, Connecticut. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**17. How will the lawyers and financial institutions representing the Settlement Class be paid?**

In 2016, the Court appointed a legal team of law firms from around the country to represent Plaintiffs. None of the lawyers has yet received any payment for their time or expenses. The lawyers intend to ask the Court to approve an award of 30% of the gross Settlement Fund in attorneys' fees, including any interest earned thereon, to compensate them for their time and the financial risk that they undertook when they agreed to represent the Plaintiffs on a contingent basis, which means that they would receive a fee only if the lawsuits were successful. In addition, the lawyers intend to ask the Court to reimburse them for all of the expenses they have incurred. Wendy's has agreed not to object to the lawyers' motion to the Court to seek a reasonable attorneys' fee and reimbursement of expenses and these amounts will be paid out of the Settlement Fund.

The Settlement Class is represented by 18 financial institutions from 16 states. In addition to the benefits that the financial institution class representatives will receive as members of the Settlement Class and subject to the approval of the Court, Wendy's has agreed to pay Service Awards of \$7,500 to each of the fifteen Settlement Class Representatives that sat for a deposition and \$2,500 to the remaining three Settlement Class Representatives for the efforts that they have expended on behalf of the Settlement Class. The amount of the Service Awards approved by the Court will be paid from the Settlement Fund.

The Court will determine whether to approve the amount of fees and expenses requested by Plaintiffs' lawyers and the proposed Service Awards to the Settlement Class Representatives at the Final Approval Hearing scheduled for November 6, 2019 at 10:00 a.m. Plaintiffs' lawyers will file an application for fees, expenses, and Service Awards no later than October 7, 2019. The application will be available on the Settlement Website [www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com) or you can request a copy by contacting the Settlement Administrator (*see* Question 23).

**OBJECTING TO THE SETTLEMENT**

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

If your financial institution is a Settlement Class Member, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. If you object to the Settlement and seek to exclude your financial institution, your financial institution will be deemed to have excluded itself.

Your objection must be in writing, shall not exceed twenty-five (25) pages, and must include:

- The name of this Litigation (*First Choice Federal Credit Union v. The Wendy's Company*, Case No. 2:16-cv-00506-NBF-MPK (W.D. Pa.));
- Your financial institution's full name, and the full name, address, email address, and telephone number of the person acting on its behalf;
- An explanation of the basis for why your financial institution is a Settlement Class Member;
- Whether the objection applies only to your financial institution, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- All grounds for the objection stated with specificity, accompanied by any legal support for the objection;
- A description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
- *All other information specified in the Preliminary Approval Order* (available on the Settlement Website, [www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com)), including but not limited to information relating to any objections you or your counsel have filed in other class action litigation; and
- Your signature on the written objection.

Any objection must be either filed electronically with the Court or mailed to the Clerk of the Court, Class Counsel, and Wendy's counsel at the addresses set forth below. The objection must be electronically filed, or if mailed postmarked, no later than **May 28, 2019**.

#### **Court**

Clerk of the Court  
USDC, Western District of  
Pennsylvania  
Joseph F. Weis, Jr.  
U.S. Courthouse  
700 Grant Street  
Pittsburgh, PA 15219

#### **Settlement Class Counsel**

Gary F. Lynch  
CARLSON LYNCH SWEET KILPELA  
& CARPENTER, LLP  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
  
Erin Green Comite  
SCOTT+SCOTT ATTORNEYS  
AT LAW LLP  
156 South Main Street  
P.O. Box 192  
Colchester, CT 06415

#### **Defense Counsel**

Kristine M. Brown  
ALSTON & BIRD LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309

In addition, any Settlement Class Member that objects to the proposed 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 five days before the Final Approval Hearing.

### **19. What is the difference between objecting and excluding/opting out?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the benefits provided by the Settlement or other terms of the Settlement only if your financial institution stays in the Settlement Class. Excluding your financial institution or "opting out" is telling the Court that you don't want to be included in the Settlement Class. If your financial institution excludes itself, you have no basis to object to the Settlement and related releases because the Settlement no longer affects you.

## **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 November 6, 2019 at 10:00 a.m., in Courtroom 9C before Magistrate Judge Maureen P. Kelly of the United States District Court for the Western District of Pennsylvania, Joseph F. Weis, Jr.

U.S. Courthouse, 700 Grant Street, Pittsburgh, PA 15219. This hearing date and time may be moved. Please refer to the Settlement Website ([www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com)) for notice of any changes.

By no later than October 7, 2019, Class Counsel shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, and expenses and for Service Awards. Objectors, if any, shall file any response to Class Counsel's motions no later than October 18, 2019. By no later than October 25, 2019, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed.

At the Final Approval Hearing, the Court will consider, among other things, whether the Settlement is fair, reasonable, and adequate; how much Plaintiffs' lawyers will receive as attorneys' fees and expenses; and whether to approve Service Awards to the Settlement Class Representatives. If there are objections, the Court will consider them. The Court will listen to people at the hearing who file in advance a timely notice of their intention to appear (*see* Question 18). At or after the Final Approval Hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

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

No. Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you submitted your objection timely and in accordance with the requirements for objecting set out of the Settlement (*see* Question 18), the Court will consider it. You may also pay your 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 Settlement Class Member and does nothing, it will remain a part of the Settlement Class but will not get any payments from the Settlement. And, unless your financial institution excludes itself, it will not be able to sue Wendy's or its franchisees about the claims being resolved through this Settlement ever again. See the Settlement for more details about the releases.

### **GETTING MORE INFORMATION**

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

This notice summarizes the Settlement. More details are in the Settlement itself. You can get a copy of the Settlement at [www.WendysFIDataBreachSettlement.com](http://www.WendysFIDataBreachSettlement.com) or from the Settlement Administrator by calling toll-free 1-888-256-6490.

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