

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

IN RE: SONIC CORP. CUSTOMER	:	CASE NO. 1:17-md-2807
DATA SECURITY BREACH	:	MDL No. 2807
LITIGATION	:	
(FINANCIAL INSTITUTIONS)	:	ORDER
	:	[Resolving Doc. 522 ; Doc. 524]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

The parties seek the Court's approval of their proposed class settlement and attorney's fee request.¹ On October 6, 2022, the Court held a fairness hearing on the proposed class settlement and fee request. At that hearing, class counsel and defense counsel both argued in favor of approving the settlement. No class members have objected to the terms of the settlement or to the attorney's fee request.

For the following reasons, the Court **APPROVES** the class settlement and **GRANTS** the attorney's fee and expenses request. The Court also **APPROVES** reduced incentive awards for named class members.

I. Background

a. Litigation History

In 2017, a data breach compromised Sonic customer payment data.² Impacted consumers sued Sonic Defendants in multiple lawsuits.³ After the MDL Court consolidated pretrial proceedings, those consumer lawsuits settled.⁴

¹ Doc. [522](#) (motion for attorney fees); Doc. [524](#) (motion for class settlement approval).

² Doc. [174](#).

³ *Id.*

⁴ *Id.*

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In the current case, Plaintiff Financial Institutions make similar claims. The Financial Institutions sue for negligence related to insecure systems that arguably allowed the data breach.⁵ Plaintiffs allege that Sonic's negligence required financial institutions to spend resources to respond to the breach.⁶

This litigation has spanned more than three years.⁷ In that time, the parties engaged in extensive discovery: exchanged "hundreds of thousands of documents"; retained six experts who served reports; and deposed corporate representatives, class members, third-party representatives, and experts.⁸

Over the course of the three years, this Court ruled on numerous motions. The Court partially granted and partially denied Sonic Defendants' motion to dismiss.⁹ The Court granted Plaintiffs' motion for class certification.¹⁰ The Court denied Sonic Defendants' summary-judgment motion.¹¹

Before reaching a settlement agreement, the parties also began pretrial motions practice. The Court granted Sonic's motion to exclude Plaintiffs' expert witness on damages and denied Sonic's motion to exclude a liability expert witness.¹² Three pretrial motions remain pending: Sonic's motion to decertify the class, Sonic's motion for a suggestion of remand, and Plaintiffs' motion to bifurcate the trial.¹³

⁵ Doc. 453.

⁶ *Id.* at 1–4.

⁷ Doc. 514-1 at 3.

⁸ *Id.* at 6–7.

⁹ Doc. 304; Doc. 357.

¹⁰ Doc. 348.

¹¹ Doc. 453.

¹² Doc. 498.

¹³ Doc. 477; Doc. 481; Doc. 503.

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b. Class Certification

In November 2020, the Court certified a class action.¹⁴ The Court defined the certified class as:

All banks, credit unions, and financial institutions in the United States that received notice and took action to reissue credit cards or debit cards or reimbursed a compromised account from any card brand in the Sonic Data Breach.¹⁵

In its class-certification decision, the Court found that the Plaintiffs met the Rule 23(a) requirements for going ahead with a class action. First, the Court found that the class included thousands of financial institutions, meeting the numerosity requirement.¹⁶ Second, the Court found class members' claims involved common questions of law and fact, including whether Sonic Defendants owed a duty to financial institutions and whether Sonic Defendants acted negligently through their data-security practices.¹⁷ Third, the Court found that the named Plaintiffs presented typical class claims because their negligence claims centered on Sonic Defendants' alleged data-security failures.¹⁸ Fourth, the Court found that the named Plaintiffs provided adequate representation.¹⁹

In addition to finding that Plaintiffs met the Rule 23(a) prerequisites, the Court also found that the Plaintiffs met the Rule 23(b) class-action requirements. The Court found that shared questions predominated over individual questions.²⁰ Additionally, the Court found that a class action would be superior to individual actions because of the number of financial

¹⁴ Doc. 343; Doc. 348. The Sixth Circuit denied Sonic Defendants permission to appeal the class certification decision. Doc. 447.

¹⁵ Doc. 348 at 1.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5–6.

¹⁸ *Id.* at 6–7.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 10–11.

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institutions affected and because of their claims' similarity.²¹

The Court appointed Financial Institution Plaintiffs as the class representatives for the certified class. The class representatives have diligently prosecuted this litigation.

The Court appointed the following attorneys as Class Counsel in November 2020: Brian Gudmundson, Zimmerman Reed LLP; and Charles Van Horn, Berman Fink Van Horn P.C. The Court found that these attorneys could fairly and adequately represent the certified class. Class counsel have competently represented the class representatives and certified class in this litigation.

c. Proposed Settlement Agreement

Now, the parties seek final approval of their proposed settlement agreement.

To reach the proposed settlement, the parties negotiated for months.²² The parties negotiated in at least three full-day mediation sessions with Magistrate Judge Jonathan D. Greenberg in January and February 2022.²³

Under the settlement agreement, Sonic would pay under a per-card formula up to \$5.73 million to resolve class members' claims.²⁴ This total would include up to \$3 million to pay class members' claims. Class members may recover \$1.00 per card the class member reissued or \$1.50 per card the class member reimbursed for fraud within four weeks of the breach.²⁵ Sonic also agreed to pay up to \$500,000 for settlement administration, up to \$30,000 for class-representative incentive awards, and up to \$2.2 million for attorney's fees and expenses.²⁶

²¹ *Id.* at 12.

²² Doc. 514-1 at 12.

²³ *Id.*

²⁴ Doc. 514-3 at 14–15.

²⁵ *Id.* at 15.

²⁶ *Id.*

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d. Class Response to the Settlement

The claims administrator notified 5,085 potential-class-member financial institutions.²⁷ The administrator's website, which provides information to potential class members, received 4,056 visits as of September 15, 2022.²⁸

By the end of the claims period, class members had filed 360 claims.²⁹

Only two class members asked for exclusion from the class settlement.³⁰ No class members objected to the proposed settlement.³¹

II. Legal Standard

Courts in the Sixth Circuit reviewing a proposed class action settlement evaluate seven factors to determine whether the settlement is "fair, reasonable, and adequate."³²

These factors are:

- (1) the risk of fraud or collusion;
- (2) the complexity, expense and likely duration of the litigation;
- (3) the amount of discovery engaged in by the parties;
- (4) the likelihood of success on the merits;
- (5) the opinions of class counsel and class representatives;
- (6) the reaction of absent class members; and
- (7) the public interest.³³

²⁷ Doc. 524-2 at 4.

²⁸ *Id.*

²⁹ Doc. 147 at 1–2.

³⁰ Doc. 135-1 at 14.

³¹ *Id.*

³² FED. R. CIV. P. 23(e)(1)(C).

³³ *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007) (hereinafter "LIAW").

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