

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Banks, credit unions, and other financial institutions that issued payment cards that were compromised in the October 2014 Kmart data breach, 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 of a class action lawsuit against Kmart Corporation (“Kmart”) and Sears Holdings Corporation (“Sears”) (collectively, “Kmart”) has been proposed in which Kmart has agreed to pay money to qualifying financial institutions (such as credit unions, banks, and others) to resolve claims relating to the payment card data breach that Kmart announced in October 2014 (the “Data Breach”).
- The lawsuit, called *Greater Chautauqua Federal Credit Union, et al. v. Kmart Corp. et al.*, Case No. 1:15-cv-02228, alleges violations of state consumer fraud statutes based on Kmart’s allegedly inadequate payment card security protocols.
- The Settlement includes a \$5,200,000.00 settlement fund that will be used to pay the claims of eligible Settlement Class Members, all costs of class notice and settlement administration, and Service Payments to the Settlement Class Representatives. In addition, Kmart agreed to waive its challenges and appeal rights and to pay the final Visa payment card assessment of \$7,574,497.00 and the MasterCard payment card assessment of \$5,798,909.00 (for a total of \$13,373,406.00). Finally, Kmart has agreed to implement payment card data security measures for a minimum of three years.
- Your entity’s legal rights are affected whether you act or don’t act. Read this Notice carefully.

SUMMARY OF LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Submit a Claim Form	The only way to get a payment from the Settlement Fund. The Visa or MasterCard assessments have been distributed subject to Visa’s and MasterCard’s procedures.
Request Exclusion	Get no payment from the Settlement Fund. This is the only option that may allow a Class Member to sue Kmart over the claims being resolved by this Settlement.
Object	Write to the Court with concerns about the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.
Do Nothing	Get no payment from the Settlement Fund and give up rights to ever be part of any other lawsuit against Kmart about the claims being resolved in this Settlement.

- 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.

**Questions? Call 1-888-839-8690 toll-free,
or visit www.KmartFIDataBreachSettlement.com**

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BASIC INFORMATION

1. Why did I get this Notice package?

The financial institution sent this Notice may have issued payment cards included in one or more of the alerts sent out by Visa and MasterCard relative to the Data Breach.

The Court authorized this Notice because you have a right to know about a proposed settlement of a class action lawsuit against Kmart and about all of the options 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 distribute the Settlement Fund pursuant to the terms of the Settlement. Visa and MasterCard will distribute (or have distributed) funds pursuant to their assessment guidelines.

This package explains the lawsuit, the Settlement, your entity's legal 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 Northern District of Illinois, and the case is known as *Greater Chautauqua Federal Credit Union, et al. v. Kmart Corp. et al.*, Case No. 1:15-cv-02228. The financial institutions who sued are called "Plaintiffs," and the companies they sued, Sears and Kmart, are the "Defendants."

2. What is this lawsuit about?

On October 10, 2014, Kmart announced that on the prior day, October 9, 2014, Kmart's Information Technology team had detected a criminal intrusion into Kmart's payment data systems during September, resulting in the potential compromise of certain payment card information. Plaintiffs, financial institutions that issued payment cards used at Kmart, brought this class action lawsuit against Kmart alleging common law claims and violations of state consumer fraud statutes based on Kmart's allegedly inadequate payment card security protocols. The lawsuit sought damages for the costs that Plaintiffs claim were incurred by financial institutions as a result of the Data Breach, such as card re-issuance costs, amounts paid to cover fraud losses, and other costs incurred in responding to the Data Breach.

Kmart denies any wrongdoing, and no court or other entity has made any judgment or other determination of any wrongdoing by Kmart.

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." If the Court certifies the Class, as it has done here for settlement purposes, 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 Kmart. Instead, both sides agreed to a settlement. Settlements avoid the costs and uncertainty of a trial and related appeals, while providing benefits to members of the Settlement Class.

Settlement Class Representatives and the attorneys for the Settlement Class ("Settlement Class Counsel," see Question 16) think the Settlement is best for all Class Members, and the Court has granted preliminary approval to the Settlement.

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WHO IS PART OF THE SETTLEMENT?

5. What financial entities are part of the Settlement?

Financial entities are members of the Class and affected by the Settlement if:

- They are a financial institution organized under the laws of the United States or a Territory thereof;
- They issued one or more payment cards that were identified as having been at risk in an Alert issued by Visa or MasterCard as a result of the payment card Data Breach that was publicly disclosed by Kmart on October 10, 2014; and
- They have not previously released claims against Kmart with respect to all of their compromised accounts.

6. Are there exceptions to being included?

Excluded from the Settlement Class is any Class Member that opts out (*see* Questions 13–15) or that does not meet the criteria listed above.

7. I'm still not sure if my financial entity is included.

If you are still not sure whether your financial entity is included, you can ask for free help. You can call 1-888-839-8690 or visit www.KmartFIDataBreachSettlement.com for more information. Or you can fill out and return the claim form described in Question 10, to see if your financial entity qualifies.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Kmart has agreed to pay \$5,200,000.00 pursuant to the Settlement into a Fund (the “Settlement Fund”). Kmart will transfer the funds directly to the Settlement Fund, out of which the Settlement Administrator will make payments to eligible Settlement Class Members pursuant to the terms of the Agreement (*see* Question 9). The cost of notifying the Class and administering the Settlement, as well as Service Payments that may be paid to the Settlement Class Representatives (subject to Court approval), will also come out of the Settlement Fund. Kmart has agreed to pay any attorneys’ fees, costs, and expenses that the Court awards separate and apart from this Fund (*see* Question 17).

In addition, Kmart has agreed not to further challenge or appeal MasterCard’s Account Data Compromise (“ADC”) assessment relating to the Data Breach. Under this provision, Kmart will pay an additional \$5,798,909.00 (not including a separate \$125,000.00 case management fee) to eligible Settlement Class Members through the ADC program.

Further, Kmart has agreed not to challenge and to pay Visa’s Global Compromised Account Recovery (“GCAR”) assessment of \$7,574,497.00 to eligible Settlement Class Members. These funds have been distributed according to Visa’s and MasterCard’s card assessment programs to financial institutions who participate in these programs.

Finally, Kmart has agreed to implement data security measures for a minimum of three years. These efforts include: (1) appointment of an executive with responsibility for protecting cardholder data; (2) obtaining annual risk assessments of its compliance with PCI-DSS standards; (3) developing safeguards to protect cardholder data such as evaluating the use of two-factor authentication with vendors; (4) educating employees about information security; and (5) enhancing security measures such as the implementation of EMV chip card technology at retail stores.

9. How much will each financial institution receive from the Settlement?

If an entity is eligible to participate in the Settlement (*see* Question 5) and does not “opt out” of this Settlement (*see* Questions 13–15), it may elect to file a claim with the Settlement Fund. The Settlement Fund will be divided into two separate Tiers for distribution: Tier 1 (“Non GCAR Eligible Tier”) and Tier 2 (“All Class Tier”). They are as follows:

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Tier 1: Non GCAR Eligible Tier

In Tier 1, only Settlement Class Members who issued Visa-branded cards for which an assessment was not paid pursuant to the Global Compromised Account Recovery (“GCAR”) program will be eligible to make a claim for each Non GCAR Eligible Compromised Payment Card that they issued and for which they received an Alert related to the Data Breach. Settlement Class Members eligible to submit a claim in Tier 1 must submit documentation consisting of copies of the Data Breach Alerts that they received on their Non GCAR Eligible Compromised Payment Cards.

Each Settlement Class Member who makes a valid claim in Tier 1 will be eligible to receive a minimum payout of \$1.00 per Non GCAR Eligible Compromised Payment Card up to a maximum payout of \$2.38 per card, depending on the total number of eligible claims made in this Tier. The maximum total payments for Tier 1 claims will be capped at \$3.4 million. Any Settlement Funds remaining from Tier 1 (if fewer claims are made than will exhaust Tier 1) will move into Tier 2 and be eligible for distribution to any Settlement Class Member (as described below).

Tier 2: All Class Tier

Tier 2 will consist of the remaining Settlement Fund (after accounting for all costs of class notice and settlement administration and Service Payments to the Settlement Class Representatives) minus the payouts in Tier 1. Every Settlement Class Member will be eligible to submit claims for any remaining unreimbursed fraud and card reissuance damages related to the Data Breach by submitting documentation detailing such damages.

For fraud damages, Settlement Class Members must submit documentation consisting of proof of all fraud expenses incurred within the Fraud Window on Compromised Payment Cards. For card reimbursement damages, Settlement Class Members must submit documentation of proof of the actual costs of replacing physical payment cards on Compromised Payment Cards. Any amounts that the Settlement Class Member recovered through the ADC or GCAR Assessment processes or from Tier 1 payouts will be subtracted from the damages claimed in order to determine the Maximum Payout Amount, which will then be distributed to eligible Settlement Class Members based on the claims submitted. If the total valid claims in the Tier 2 Maximum Payout Amount exceed the remaining Settlement Fund in Tier 2, any payouts will be distributed to eligible Settlement Class Members on a pro rata basis.

Until all claims are received and validated, we cannot determine how much each Settlement Class Member will receive.

Payments from the ADC and GCAR assessments have been paid out according to Visa and MasterCard’s internal guidelines for participating financial institutions. If you have questions about how those funds have been distributed, please contact your card processor.

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

10. How can a financial institution get a payment?

To qualify for a payment from the Settlement Fund, each Settlement Class Member must complete and timely submit a valid claim form. There are two types of claim forms in this Settlement: (i) Non GCAR Eligible Claim Form (Tier 1) and (ii) All Class Tier Claim Form (Tier 2). To file a claim, you need to visit www.KmartFIDataBreachSettlement.com and choose which claim form you wish to file.

Once you have selected which claim form to file, read the instructions carefully, include all information and documents the form asks for, sign it, and file it through www.KmartFIDataBreachSettlement.com by midnight on **January 5, 2017**.

ADC and GCAR payments have been paid according to Visa’s and MasterCard’s guidelines.

11. When would a financial institution get its payment?

Payments to Settlement Class Members from the Settlement Fund will be made after the Settlement is finally approved and any appeals or other reviews have been completed. The Court will hold a hearing on **February 3, 2017** to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals, which could take more than a year to resolve. You may visit www.KmartFIDataBreachSettlement.com for updates on the progress of the Settlement. Please be patient.

ADC and GCAR payments have been paid according to Visa’s and MasterCard’s guidelines.

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

Unless a Settlement Class Member excludes itself from the Settlement, it cannot sue Kmart or be part of any other lawsuit against Kmart about the issues this Settlement resolves. Unless a Settlement Class Member excludes itself, all of the decisions by the Court will bind it. The specific claims against Kmart each Class Member is giving up (“releasing”) by remaining in the Settlement Class are described in Section 7 of the Settlement Agreement. The Settlement Agreement is available at www.KmartFIDataBreachSettlement.com.

The Settlement Agreement describes the released claims in detail, so read it carefully. 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 financial entity’s legal counsel if you have questions about what this means.

If you want to keep your financial entity’s rights to sue or continue to sue Kmart based on claims this Settlement resolves, you must take steps to request exclusion from the Settlement Class (*see* Questions 13–15).

Even if you exclude yourself from the Settlement, you are still eligible to receive funds from the ADC and GCAR assessments.

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 may complete and submit a Request for Exclusion online, at www.KmartFIDataBreachSettlement.com; or, alternatively, send a letter by U.S. mail that includes:

- The name of this proceeding (*Greater Chautauqua Federal Credit Union, et al. v. Kmart Corp. et al.*, Case No. 1:15-cv-02228);
- 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 letter requesting exclusion from the Class; and
- A signature of a person authorized to make such decisions for your financial institution.

Financial institutions that seek exclusion from the Settlement through a letter are also asked to provide:

- The number of payment cards issued by you that you believe would be eligible for the Settlement.

If you wish to exclude your financial institution, but you are not utilizing the Request for Exclusion module of the Settlement website, you must mail the above-described letter, postmarked no later than **January 5, 2017**, to:

Kmart Financial Institutions Data Breach Settlement
Settlement Administrator
P.O. Box 3230
Portland, OR 97208-3230

Settlement Class Members who request exclusion from the Class will not get any payment from the Settlement Fund as part of this Settlement and cannot object to this Settlement. They will not be legally bound by anything that happens in this lawsuit and may be able to sue Kmart in the future. Class Members who opt out of the Settlement will still be eligible to receive payments from the ADC and GCAR assessments.

Either Party shall have the right to terminate the Settlement Agreement if Settlement Class Members who issued a certain percentage of the total number of accounts submit valid requests to opt out.

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

No. Unless a Settlement Class Member excludes itself, it will give up any right to sue Kmart for the claims that this Settlement resolves. If your financial institution has a pending lawsuit against Kmart, speak to your legal counsel in that case immediately. You must request exclusion from this Class to bring or to continue a separate lawsuit. Remember, the exclusion deadline is **January 5, 2017**.

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15. If my financial institution excludes itself, can it get money from the Settlement Fund?

No. If you request exclusion, do not submit in a claim form asking for a payment. Your financial institution will still be eligible to receive payments from the ADC and GCAR assessments

THE LAWYERS REPRESENTING YOU

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

Yes. The Court appointed Murray Law Firm, Hausfeld LLP, and Lockridge Grindal Nauen P.L.L.P. as Co-Lead “Settlement Class Counsel” to represent your financial institution and other Class Members. Class Members will not be charged for these lawyers. If your financial institution wants to be represented by its own lawyer, they may hire one at its own expense.

17. How will the lawyers be paid?

Settlement Class Counsel will apply to the Court for a reasonable award of attorneys’ fees and expenses (the “Fee Request”), which will be separate from the Settlement Fund. Settlement Class Counsel will also seek Service Payments of up to \$10,000.00, subject to Court approval, for each Settlement Class Representative. Service Payments are compensation to Settlement Class Representatives for their efforts in pursuing this lawsuit, among other contributions.

Settlement Class Counsel will make their requests to the Court for attorneys’ fees and costs, as well as Service Payments, on or before November 21, 2016. These requests will be available on the Settlement website (www.KmartFIDataBreachSettlement.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 doesn’t like the Settlement?

If your financial institution is a Settlement Class Member, you can object to the Settlement if you don’t 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.

To object, you must send a letter stating that you object to the Settlement. Your objection must include:

- A caption that includes the name of the case as follows: *Greater Chautauqua Federal Credit Union, et al. v. Kmart Corp., et al.*, Case No. 1:15-cv-02228;
- The Settlement Class Member’s name, address, telephone number, statement that the Settlement Class Member intends to object, and signature;
- The name, address, bar number, and telephone number of the objecting Settlement Class Member’s counsel, if represented by an attorney;
- The number of class action settlements objected to by the Settlement Class Member in the last three years; and
- A statement whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing.

If your financial institution hires a lawyer to represent it in preparing a written objection or appearing at the Final Approval Hearing, its counsel must provide additional information as specified in the Preliminary Approval Order (available on the Settlement website, www.KmartFIDataBreachSettlement.com).

An objection must be filed with the Northern District of Illinois Clerk of the Court on or before **January 5, 2017** and must be served on Settlement Class Counsel and counsel for Defendants so that it is received by **January 5, 2017**. The addresses are listed below.

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Court	Settlement Class Counsel	Defense Counsel
Clerk of the Court U.S. District Court Northern District of Illinois 219 South Dearborn Street Chicago, IL 60604	Arthur M. Murray Murray Law Firm 650 Poydras Street, Suite 2150 New Orleans, LA 70130	Phyllis B. Sumner S. Stewart Haskins King & Spalding LLP 1180 Peachtree Street, NE Atlanta, GA 30309

19. What's 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. Requesting exclusion or "opting out" is telling the Court that you don't want your financial institution to be included in the Settlement. If you request exclusion, you have no basis to object to the Settlement because the Settlement no longer affects your financial institution.

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 **11:00 a.m. on February 3, 2017**, in Courtroom 1225 before Judge John Z. Lee of the United States District Court for the Northern District of Illinois, located at 219 South Dearborn Street, Chicago, IL 60604. This hearing date and time may be moved. Please refer to the Settlement website (www.KmartFIDataBreachSettlement.com) for notice of any changes.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who appear at the hearing (*see* Question 18). The Court may also decide how much Settlement Class Counsel will receive as attorneys' fees and costs and whether to award Service Payments to Settlement Class Representatives (*see* Question 17). After the Final Approval Hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

21. Does my financial institution or a representative have to attend the hearing?

No. Settlement Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expense. If you submit a written objection, you do not have to come to the Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. Your financial institution may also pay for its own lawyer(s) to attend, but it is not necessary.

IF YOU DO NOTHING

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

Settlement Class Members that do nothing will remain a part of the Settlement Class but will not get any payments from the Settlement Fund. And unless they request exclusion, they will not be able to sue Kmart about the claims being resolved through this Settlement ever again.

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 www.KmartFIDataBreachSettlement.com or from the Settlement Administrator by calling toll-free 1-888-839-8690 or writing to *Kmart Financial Institutions Data Breach Settlement*, Settlement Administrator, P.O. Box 3230, Portland, OR 97208-3230. The status of the Settlement, any appeals, any claims made, and the date of payments will be posted on the Settlement website.

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

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