

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

CHARLES MILLIKEN JR. and MARY KAY MILLIKEN, as individuals and on behalf of all others similarly situated,

Plaintiffs,

vs.

BAYER HERITAGE FEDERAL CREDIT UNION,

Defendant.

CASE NO.: 5:24-cv-00057

JUDGE JOHN P. BAILEY

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT FOR PERSONS WHOSE INFORMATION WAS
POTENTIALLY ACCESSED IN A SECURITY INCIDENT AFFECTING
BAYER HERITAGE FEDERAL CREDIT UNION IN OCTOBER 2023**

All persons whose Private Information was compromised as a result of the Cyber-Attack that Bayer Heritage Federal Credit Union experienced in October 2023 may benefit from this class action settlement.

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

THIS IS A NOTICE OF A SETTLEMENT OF A CLASS ACTION LAWSUIT.

THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.

YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOTHING.

PLEASE READ THIS NOTICE CAREFULLY.

**YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT IF YOU RECEIVED
NOTICE OF THE SECURITY INCIDENT TARGETING BAYER HERITAGE FEDERAL CREDIT UNION IN
OCTOBER 2023.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM BY MAY 20, 2025	If you submit a Claim Form, <u>included along with this Notice</u> , by May 20, 2025 , your Claim Form will be considered for the Settlement Benefits claimed therein and described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY APRIL 20, 2025	You will receive no benefits, but you will retain your legal claims against the Defendant.
OBJECT BY APRIL 20, 2025	Write to the Class Counsel and/or the Court about why you do, or do not, like the Settlement. You must remain in the Settlement Class to object to the Settlement.
GO TO A HEARING ON JUNE 20, 2025	Ask to speak in Court about the fairness of the Settlement.

1. What is this Notice?

This is a court-authorized notice of a proposed settlement (the “Settlement”) in a class action lawsuit, *Milliken, et al. v. Bayer Heritage Federal Credit Union*, Case No. 5:24-cv-00057, currently pending in the United States District Court for the Northern District of West Virginia (the “Court”). The Settlement would resolve the Lawsuit brought on behalf of persons who allege that their information was impacted by the Security Incident perpetrated against Defendant Bayer Heritage Federal Credit Union (“Bayer Heritage” or “Defendant”) on or about October 2023 (the “Security Incident”). The Court has granted preliminary approval of the Settlement Agreement and has conditionally certified the Settlement Class for purposes of settlement only. This Notice explains the nature of the class action lawsuit, the terms of the Settlement Agreement, and the legal rights and obligations of members of the Settlement Class. Please read the instructions and explanations below so that you can better understand your legal rights.

2. Why did I receive notice?

You received notice because you were identified by Bayer Heritage as a person whose information may have been accessed without authorization by an unknown individual on or about October 2023.

3. What is this lawsuit about?

On December 1, 2023, Bayer Heritage became aware of a Security Incident that occurred in October 2023, which resulted in the Data Breach that exposed the Private Information of certain members and account holders. Bayer Heritage notified state Attorneys General of the Security Incident, then provided notice to individuals whose personal information may have been impacted. The Lawsuit alleges that Bayer Heritage failed to adequately protect the information of the potentially affected individuals, and asserts various claims, including negligence, unjust enrichment, breach of express contract, and breach of implied contract. Bayer Heritage contests these claims and denies any wrongdoing.

4. Why is this a class action?

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” When a class action is settled, the settlement, which must be approved by the court, resolves the issues for all Class Members, except for those who exclude themselves from the settlement.

5. Why is there a settlement?

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties have reached a settlement that resolves all claims by the Class related to the Security Incident. If approved by the Court, the Settlement Agreement requires Bayer Heritage to provide, at no cost to Class Members, credit monitoring services, and compensation to certain Class Members who submit valid Claim Forms. The Settlement is not an admission of wrongdoing by Bayer Heritage and does not imply that there has been, or would be, any finding that Bayer Heritage violated the law.

The Court already has preliminarily approved the Settlement Agreement. Nevertheless, because the settlement of a class action determines the rights of all members of the Class, the Court overseeing this lawsuit must give final approval to the Settlement Agreement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this Notice and the opportunity to exclude themselves from the Settlement Class, and to voice their support or opposition to final approval of the Settlement Agreement. If the Court does not give final approval to the Settlement Agreement, or if it is terminated by the Parties, the Settlement Agreement will be void, and the Lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

6. How do I know if I am a part of the Settlement?

You are a member of the Settlement Class if you were sent a “Notice of Data Breach” notifying you of the October 2023 Security Incident because your Personal Information was maintained on Defendant Bayer Heritage’s system.

YOUR BENEFITS UNDER THE SETTLEMENT

7. What can I get from the Settlement?

All Settlement Class Members are eligible for two (2) years of free credit monitoring with at least \$1,000,000.00 in identity theft/fraud insurance, which is in addition to any free credit monitoring initially provided by Bayer Heritage following the Security Incident. Class Members can also receive monetary relief including: (1) reimbursement for loss of time compensated at \$20.00 per hour for up to 4 hours (\$80.00 cap); and (2) reimbursement for documented out-of-pocket expenses and financial losses up to \$5,000.00 per claimant.

8. When will I receive these benefits?

If you submit a Claim for credit monitoring and identity theft/fraud insurance, you will receive these benefits after the Court enters a Final Approval Order. If you submit a Claim for monetary recovery, you will receive payment after the Court enters a Final Approval Order in the amount approved by the Claims Administrator after processing your Claim.

9. I want to be a part of the Settlement. What do I do?

To submit a claim for credit monitoring and identity theft/fraud insurance, and/or monetary recovery for documented unreimbursed expenses and/or lost time, you must submit the Claim Form found on the Settlement Website and included along with this Notice, along with the requisite documentation.

You must submit any Claims postmarked by May 20, 2025, and there can be only one Valid and Timely Claim per Class Member.

10. What counts as an unreimbursed out-of-pocket expense and what documentation is needed?

Class Members are eligible to submit claims of up to \$5,000.00 (in total per Class Member) for the following categories of documented unreimbursed out-of-pocket expenses:

- Costs associated with obtaining credit reports;
- Costs associated with purchasing identity theft insurance products for the period after the expiration of the credit monitoring and identity theft insurance coverage offered to the Subclass Members at the time of notice;
- Credit monitoring costs that were incurred on or after October 31, 2023, through the date of the Claim submission;
- Long-distance telephone charges;
- Cell phone minutes (if charged by the minute or the amount of data usage);
- Internet usage charges (if charged by the minute or the amount of data usage);
- Text messages (if charged by the message);
- Miscellaneous expenses such as notary, fax, postage, copying and mileage;
- Unreimbursed bank fees;
- Unreimbursed card reissuance fees;
- Unreimbursed overdraft fees;
- Unreimbursed charges related to unavailability of funds;
- Unreimbursed late fees;
- Unreimbursed over-limit fees;
- Unreimbursed charges from banks or credit card companies; and
- Any other documented unreimbursed out-of-pocket losses that were caused by this Security Incident.

Class Members making claims for documented unreimbursed out-of-pocket expenses must:

- a. Show that the loss is an actual, documented, and unreimbursed monetary loss;
- b. Show that the loss was caused by the Security Incident;
- c. Show that the loss occurred after the date of the Security Incident and before the Claims Deadline; and
- d. Show that the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

Reasonable documentation must be submitted with all Claims showing that the Out-Of-Pocket Expenses were caused by, or plausibly arose from, the Security Incident. More details are provided in the Settlement Agreement, which is available at www.BayerHeritageDataSettlement.com.

Class Members may also submit claims for reimbursement of up to four hours of lost time spent remedying issues related to the Security Incident (at \$20.00 per hour). Class Members may submit claims for up to four hours of lost time by submitting an attestation that they spent the claimed time responding to issues raised by the Security Incident. This attestation may be completed by filling in a circle next to the sentence: "I swear and affirm that I spent the amount of time noted in response to Bayer's October 2023 data Security Incident." No other documentation is required to make a valid claim for reimbursement of lost time spent remedying issues related to the Security Incident.

11. If I'm eligible for expense of loss reimbursement, when will I be paid?

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement Agreement, so please be patient. However, if the Court gives final approval to the Settlement, eligible Settlement Class Members will be paid as soon as possible after the Court order becomes final. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available at www.BayerHeritageDataSettlement.com, or contact the Claims Administrator or Class Counsel at the information provided below.

12. What am I giving up if I remain in the Settlement?

By staying in the Class, all the Court's orders will apply to you, and you give Defendant a "release." A release means you cannot sue or be part of any other lawsuit against Defendant about the claims or issues in this lawsuit with respect to the unauthorized access of your information stored in Defendant's system on or about October 2023.

The precise terms of the release are in the Settlement Agreement, which is available on the Settlement Website. Unless you formally exclude yourself from this Settlement, you will release your claims. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

13. How much will the Class Representatives receive?

The Plaintiffs will seek a payment of \$2,500.00 each for their services to the Class Members. This payment is subject to the Court's Approval and is not included in the amount available to Class Members.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to remain in the Settlement, but you want to keep your legal claims against Defendant, then you must take steps to exclude yourself from this Settlement.

14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from *Milliken, et al. v. Bayer Heritage Federal Credit Union*, Case No. 5:24-cv-00057. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked **no later than April 20, 2025**, to:

Milliken v. Bayer Heritage Federal Credit Union Claims Administrator
P.O. Box 301134
Los Angeles, CA 90030-1134

15. If I exclude myself, do I still receive benefits from this Settlement?

No, you will not receive anything resulting from the Settlement, but you will have the right to sue Defendant over the claims raised in this case, either on your own or as a part of a different lawsuit. If you exclude yourself, the time you have in which to file your own lawsuit (called the “statute of limitations”) will begin to run again. You will have the same amount of time to file the suit that you had when this case was filed.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has appointed the law firms of Milberg Coleman Bryson Phillips Grossman, PLLC and Chestnut Cambronne, PA to serve as Class Counsel. You will not be charged for these lawyers and if you want to be represented by your own lawyer, you may hire one at your own expense.

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17. How will the lawyers be paid?

Class Counsel will be paid reasonable attorneys’ fees and expenses up to \$175,000.00, subject to court approval. This amount will be paid by Bayer Heritage separately from all benefits to the Settlement Class. You will not receive a bill or invoice for attorneys’ fees or expenses.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

18. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can object to the Settlement and the Court will consider your views. In order to object to the Settlement, you must provide a written objection (such as a letter or legal brief) stating that you object and the reasons why you think the Court should not approve the Settlement. Your objection should include: (1) your full name, address, and current telephone number; (2) the name and number of this case; (3) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (4) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; (5) whether the objector intends to appear at the Final Approval Hearing; and (6) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel.

To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than the Objection Date, to Proposed Settlement Class Counsel, Philip J. Krzeski at CHESTNUT CAMBRONNE, PA, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 45202; and/or David K. Lietz at MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC, 5335 Wisconsin Avenue, NW, Washington, DC 20015-2052; and counsel for Defendant, Daniel E. Rohner at SHOOK, HARDY & BACON L.L.P., 1660 17th Street, Suite 450, Denver, CO 80202.

The objector or his or her counsel may also file an objection with the Court through the Clerk of Courts, with service on Proposed Settlement Class Counsel and Defendant's Counsel. For all objections mailed to Proposed Settlement Class Counsel and counsel for Defendant, Proposed Settlement Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement. You may attend if you wish, but you are not required to do so.

19. Where and when is the Final Approval Hearing?

The Court has already given preliminary approval to the Settlement Agreement. A final hearing on the Settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement Agreement.

The Court will hold a hearing on **June 20, 2025 at 11:00 a.m.** in the courtroom of the Honorable John P. Bailey, Frederick P. Stamp, Jr. Federal Building and United States Courthouse, 1125 Chapline Street, Wheeling, WV 26003. The purpose of the hearing will be for the Court to determine whether the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Class and to determine the appropriate amount of compensation for Class Counsel and rule on the request for service awards for the Representative Plaintiffs. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed Settlement. After the hearing, the Court will decide whether to approve the Settlement.

YOU ARE NOT REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THIS SETTLEMENT. The hearing may be postponed to a later date without notice.

GETTING MORE INFORMATION

This Notice only provides a summary of the proposed Settlement. Complete details about the Settlement can be found in the Settlement Agreement available on the Settlement Website, www.BayerHeritageDataSettlement.com.

If you have any questions, you can contact the Claims Administrator or Class Counsel at the numbers or email addresses set forth above. In addition to the documents available on the Settlement Website, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR TO THE JUDGE.

They are not permitted to answer your questions.

By order of: Hon. John P. Bailey, United States District Court, Northern District of West Virginia