

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

CIRCUIT COURT OF OREGON  
COUNTY OF MULTNOMAH

CHRIS COCHRAN, BONNIE  
DEGNER, SANDRA DEICH, ALEX  
HORSEY, KIRA CLASSEN, DARREN  
GRATREAK, CHRISTOPHER  
MCCABE, SOPHIA MEKKERS, JOHN  
BELIVEAU, individually and on behalf  
of other customers,

Plaintiffs,

v.

BURGERVILLE LLC,

Defendant.

Case No. 18CV44864 (Control Case)

**ORDER PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT AGREEMENT**

**MOTIONS JUDGE:**

**Kathleen M. Dailey**

MAUREEN BRENNAN, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

BURGERVILLE LLC,

Defendants.

Case No. 18CV50994

Class Counsel has filed with the Court a Motion for Preliminary Approval of the Class Action Settlement, seeking an Order preliminarily approving the proposed Settlement (the "Settlement") and ordering notice pursuant to the Notice Plan, in accordance with the Settlement Agreement (the "Agreement") entered into by the parties on November 8, 2019.

1           Based on the consent of the parties, and after review and consideration of  
2 the Motion, the Agreement, and the exhibits attached thereto, and the related  
3 submissions,

4           **IT IS HEREBY ORDERED that:**

5           1.       The Court, for purposes of this Preliminary Approval and Notice  
6 Order, adopts all defined terms set forth in the Agreement, and incorporates  
7 them herein by reference as if fully set forth herein and having the full force and  
8 effect of an Order of this Court.

9           2.       The Court preliminarily approves the Settlement as embodied by  
10 the Agreement, subject to further consideration at the Final Approval Hearing  
11 described below. The Court finds that the requirements of ORCP 32 are satisfied  
12 with respect to the “Settlement Class Members” (as defined in Paragraph 3 of  
13 this Order and the Agreement) and finds that the Agreement provides  
14 substantial relief to the Settlement Class without the risk, cost, or delay  
15 associated with continued litigation.

16           3.       The Court hereby certifies the following Settlement Class for this  
17 action:

18                   means all person who used a debit or credit card to make a  
19                   purchase at a Burgerville restaurant from September 12, 2017  
20                   through September 30, 2018, with the exclusion of Burgerville’s  
21                   officers or directors and the judge or judges to whom this matter is  
22                   assigned and any member of the judges’ staffs, or the judges’  
23                   immediate family members.

24           4.       The Settlement Class is certified solely for purposes of the  
25 settlement; in the event the settlement is not completed, the parties shall be  
26 returned to their pre-settlement positions.

1           5.       For purposes of the settlement, the Court appoints William B.  
2 Federman of Federman & Sherwood as Lead Counsel and appoints Michael Fuller  
3 of Olsen-Daines, Kelly Jones of The Law Office of Kelly Jones and Justin Baxter of  
4 Baxter & Baxter LLP, together with Lead Counsel, as Class Counsel.

5           6.       For purposes of the settlement, the Court approves and appoints  
6 Kira Classen, Andrew Perkins, Kenneth Ward, and John Beliveau as  
7 Representative Plaintiffs to act on behalf of the Settlement Class.

8           7.       The Agreement seeks to resolve the claims of the Class Members  
9 arising out of the Security Incident that was announced by Burgerville on October  
10 3, 2018.

11          8.       The Court approves, as to form and content, the Notice of Class  
12 Action Settlement and Final Approval Hearing (the “Notice of Settlement”), a  
13 copy of which is attached hereto as Exhibit 1.

14          9.       The Court finds that Notice Program described in section 6 of the  
15 Agreement complies with ORCP 32 D and fully satisfies the requirements of due  
16 process and the Oregon Rules of Civil Procedure and approves the Notice  
17 Program.

18          10.      This Court hereby approves the appointment of KCC, LLC as  
19 Claims Administrator and orders the Parties and the Claims Administrator to  
20 administer the Notice Program in accordance with the terms of the Agreement.

21          11.      Representative Plaintiffs and the Settlement Class Members are  
22 hereby enjoined from prosecuting any claim in the Action and from filing actions  
23 or proceedings against Defendant related to the Action.

24          12.      The Agreement shall not be offered or admitted into evidence and  
25 the Settlement shall not be or referred to in any way (orally or in writing) in any  
26

1 action, arbitration, or other proceeding, except as allowed by Rule 408 of the  
2 Oregon Evidence Code.

3 13. The Agreement shall have no precedential, collateral estoppel, or  
4 *res judicata* effect upon Defendant in any matter or proceeding other than (a)  
5 this action and/or (b) a proceeding involving an effort to enforce the Agreement.

6 14. The Court hereby authorizes the Claims Administrator, subject to  
7 the terms of the Agreement, to supervise, administer, and carry out the Notice  
8 Program as set out in Section 6 of the Agreement. The deadline for initiating the  
9 Notice Program shall be fourteen (14) days after entry of this Order.

10 15. Settlement Class Members seeking any benefit under the  
11 Agreement must do so by complying with the following procedures:

12 a. No later than one hundred four (104) days after the entry of  
13 this Preliminary Approval Order (and thus no less than ninety (90) days  
14 after the initiation of the Notice Program) (the “Claims Deadline”), the  
15 Settlement Class Member must timely complete and submit a written  
16 Claim Form, in the form attached hereto as Exhibit 2, to the Claim  
17 Administrator, postmarked, or submitted electronically in accordance  
18 with the requirements for electronic submission of a Claim Form as  
19 described in the Notice of Settlement on or before the Claims Deadline.

20 b. Claim Forms submitted after the Claims Deadline are not  
21 timely and shall be rejected.

22 c. The Claim Form must be verified by the Settlement Class  
23 Member with a statement that he or she qualifies as a Settlement Class  
24 Member and that his or her Settlement Claim is true and correct, to the  
25 best of his or her knowledge and belief, and is being made under penalty  
26 of perjury. Documentation, where required, may be submitted

1 electronically in accordance with the procedures for electronic Claim Form  
2 submission and failure to provide such supporting documentation as is  
3 requested on the Claim Form shall result in denial of the Settlement  
4 Claim in question with respect to any remedy requiring such  
5 documentation.

6 d. Without limiting any other requirement, condition or  
7 procedure set forth herein, any Settlement Claim must satisfy the  
8 following criteria as applicable:

9 (i) For any Settlement Claim seeking reimbursement of  
10 out-of-pocket expenses under Section 2.1 or 2.2 B of the Agreement,  
11 the Settlement Class Member seeking reimbursement must submit  
12 with the Claim Form documentation that reasonably establishes  
13 the amount of the expenses incurred and the fact that the expenses  
14 were incurred as a result of the Security Incident. Valid  
15 documentation includes receipts, credit card statements, voided  
16 checks, and bank statements, or the like.

17 (ii) For any Settlement Claim seeking compensation for  
18 lost time personally incurred by a Settlement Class Member in  
19 connection with addressing the Identity Theft or fraud under  
20 Section 2.2 A of the Agreement, the Settlement Class Member must  
21 provide documentation establishing that he or she suffered out-of-  
22 pocket expenses as a consequence of the Security Incident  
23 satisfying the criteria set forth in Section 2.4 C(i) of the Agreement,  
24 and, to the extent the Settlement Claim seeks to recover for more  
25 than two hours of time, a detailed explanation of the time spent  
26

1 supported by documentation reasonably verifying that explanation,  
2 such as copies of correspondence, phone records, or receipts.

3 (iii) For any Settlement Class Member seeking to enroll in  
4 credit monitoring services under Section 2.3 of the Agreement, the  
5 Settlement Class Member must verify on his or her Claim Form,  
6 under penalty of perjury, that he or she made a purchase from  
7 Burgerville using a payment card between September 12, 2017 and  
8 September 30, 2018, and has not previously enrolled in free credit  
9 card monitoring offered by Burgerville.

10 16. Any of the Settlement Class Members (other than the  
11 Representative Plaintiffs) may object to the Agreement by complying with the  
12 following procedures:

13 a. No later than one hundred four (104) days after the entry of  
14 this Preliminary Approval Order (and thus no less than ninety (90) days  
15 after the initiation of the Notice Program), the objecting Class Member  
16 must file with the Court and serve on Lead Counsel and Defendant's  
17 Counsel at the addresses specified in the Notice of Settlement a written  
18 objection containing the following:

19 (i) A heading referring to the Case Number 18CV44864,  
20 pending before the Multnomah County Circuit Court in the State of  
21 Oregon and entitled "*Cochran v. Burgerville, LLC*";

22 (ii) the objector's full name, current address telephone  
23 number, and email address (if any);

24 (iii) a statement that he or she is a Settlement Class  
25 Member, including an attestation that he or she made a purchase  
26 using a payment card at a Burgerville restaurant during the Class

1 Period and identifying the address of the location where he or she  
2 made the purchase;

3 (iv) a written statement of all grounds for the objection,  
4 accompanied by any supporting materials or analysis that the  
5 objector believes applicable;

6 (v) the identity of all counsel representing the objector, if  
7 any;

8 (vi) a written statement indicating whether he or she  
9 intends to appear or testify at the final approval hearing and the  
10 identity of all counsel, if any, who will appear at the final approval  
11 hearing on behalf of the objector;

12 (vii) a list of all persons who will be called to testify at the  
13 final approval hearing in support of the objection;

14 (viii) a list, by case name, court, and docket number, of all  
15 other cases in which the objector (directly or through counsel) has  
16 filed an objection to any proposed class action settlement in the last  
17 three years; and

18 (ix) the objector's signature and the signature of the objectors  
19 duly authorized attorney

20 b. No Class Member shall be entitled to contest in any way the  
21 approval of the terms and provisions of the Agreement or of the Final  
22 Approval Order and General Judgment to be entered except by filing and  
23 serving written objections in accordance with the provisions of this order  
24 and Section 8 of the Agreement.

25 17. Only Class Members who have not previously and timely excluded  
26 themselves from the class shall be entitled to object to the approval of the

1 Agreement or to the Final Approval Order and General Judgment to be entered  
2 under the Agreement.

3 18. Any Class Member (other than the Representative Plaintiffs) may  
4 opt out of the Settlement Agreement by complying with the following  
5 procedures:

6 a. No later than one hundred four (104) days after the entry of  
7 this Preliminary Approval Order (and thus no less than ninety (90) days  
8 after the initiation of the Notice Program) (the “Opt-Out Deadline”), each  
9 Class Member wishing to opt out of the Settlement Class shall  
10 individually sign and submit written notice of such intent to the  
11 designated Post Office box established by the Claims Administrator as  
12 specified in the Notice of Settlement.

13 b. The written opt-out notice must include the individual’s  
14 name and address, a statement that he or she wants to be excluded from  
15 the Settlement Class, the number of distinct debit and credit cards used by  
16 the individual to make a purchase at a Burgerville restaurant from  
17 September 12, 2017 through September 30, 2018, and the individual’s  
18 signature. To be effective, the written opt-out notice must clearly  
19 manifest a the individual’s intent to be excluded from the Settlement  
20 Class and acknowledge that, although the person may proceed  
21 individually with a claim, he or she or they may not do so as a part of a  
22 class action.

23 c. To be effective, the written opt-out notice must be received no  
24 later than the Opt-Out Deadline established in paragraph 18.a above.

25 d. No later than fourteen (14) days after the Opt-Out Deadline  
26 established in paragraph 18.a above, the Claims Administrator shall



1 provide the Parties with copies of completed written opt-out notifications  
2 and a final list of all Class Members who have timely and validly excluded  
3 themselves from the Settlement Class. Prior to the final approval  
4 hearing, Class Counsel shall file with the Court a list of the names of  
5 persons who have timely and validly opted out of the Settlement Class.

6 e. All Class Members who submit valid and timely notices of  
7 their intent to be excluded from the Settlement Class shall not receive any  
8 reimbursement, compensation, or other benefits under, or be bound by,  
9 the terms of this Settlement Agreement.

10 f. All persons falling with the definition of a Settlement Class  
11 Member failing to timely and validly submit written opt-out notices of  
12 their intent to be excluded from the Settlement Class shall be bound by  
13 the terms of this Settlement Agreement and the Final Approval Order and  
14 General Judgment entered thereon.

15 19. The Court will conduct the Final Approval Hearing on April 6,  
16 2020 at 9 a.m., to rule on the motion for final approval of the Agreement, any  
17 timely objection filed by a Settlement Class Member, and issuance of the Final  
18 Approval Order and General Judgment.

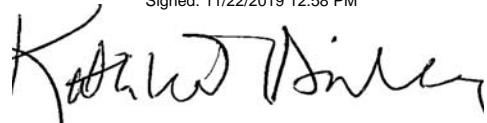
19 20. Lead Counsel and Defendant's Counsel are hereby authorized to  
20 use all reasonable procedures in connection with the approval and  
21 administration of the Agreement that are not materially inconsistent with this  
22 Order or the Agreement without further approval of the Court.

23 21. If the Settlement, including any valid amendment made with the  
24 consent of all parties to the Agreement or as otherwise specifically provided in  
25 the Agreement, is not approved by the Court or shall not become effective for any  
26 reason whatsoever, the Agreement and any actions taken or to be taken in

1 connection therewith (including this Order and any judgment entered herein)  
2 shall be terminated and shall become void and of no further force and effect  
3 except for the obligations of Defendant to pay for any expense incurred in  
4 connection with the Notice Program and administration provided for by this  
5 Order, and neither the Agreement, nor any provision contained in the  
6 Agreement, nor any action undertaken pursuant thereto, nor the negotiation  
7 thereof by any party shall be deemed an admission or offered or received as  
8 evidence at any proceeding in this or any other action or proceeding.

9       22. Neither the Agreement nor any term or provision contained in the  
10 Agreement, nor any negotiations, statements or proceedings in connection  
11 therewith shall be construed as, or be deemed to be evidence of, an admission or  
12 concession of the Class Representatives, any Settlement Class Member,  
13 Defendant, or any related party of any liability or wrongdoing by them, or any of  
14 them, and shall not be offered or received into evidence in any action or  
15 proceeding or be used in any way as an admission, concession, or evidence of any  
16 liability or wrongdoing of any nature, and shall not be construed as, or deemed  
17 to be evidence of, an admission or concession that any Class Representative, any  
18 Settlement Class Members, or any other person that has or has not suffered any  
19 damage.

Signed: 11/22/2019 12:58 PM

20  
21   
22 **Circuit Court Judge Kathleen M. Dailey**  
23  
24  
25  
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

In the Matter of:

Case No: 18CV44864 (Control Case)

CHRIS COCHRAN et al,

Plaintiff/Petitioner,

and

BURGERVILLE LLC

Defendant/Respondent.

**CERTIFICATE OF READINESS  
UTCR 5.100**

**Certificate of Readiness under UTCR 5.100**

I certify this proposed judgment/order is ready for judicial signature because *(check all that apply)*:

- Service is not required under UTCR 5.100 (1)(c) because the other party has been found in **default** or an order of default is being requested with this proposed judgment/order; because this judgment/order is submitted **ex parte** as allowed by statute or rule; or this judgment/order is being submitted in **open court** with all parties present.
- Each party affected by this judgment/order has **stipulated** to or **approved** the judgment/order, as shown by the signatures on the judgment/order, or by written confirmation sent to me.
- I have **served** (complete service section below) a copy of this judgment/order and the *Notice of Proposed Judgment/order* to all parties entitled to service. **And:**
- No objection has been served on me within the 7-day time frame.
  - I received objections that I could not resolve with the other party despite reasonable efforts to do so. I have filed with the court a copy of the objections I received and indicated which objections remain unresolved.
  - After conferring about objections, the other party agreed to file any remaining objection with the court.

**Certificate of Service under UTCR 5.100 (if applicable)**

I certify that on *(date)* November 13, 2019 : I placed a true and complete copy of this proposed *Judgment/order* in the United States mail to *(name)* Counsel of Record via Electronic Filing and Service at *(address)* \_\_\_\_\_

Date: November 13, 2019

**Submitted by:**

s/ Justin M. Baxter

Justin M. Baxter

Plaintiff/Petitioner  Defendant/Respondent, Signature

Print Name

8835 SW Canyon Lane, Suite 130

Portland, OR 97225

503-297-9031

Contact Address

City, State, Zip Code

Contact Telephone

# **NOTICE OF PROPOSED JUDGMENT OR ORDER**

*To be sent to all other parties before submitting proposed Judgment or Order to the court for signature. Send the Judgment or Order to the other party with this Notice at least 7 days before submitting it to the court. This does not apply to judgments submitted with a Motion for Order of Default or after and Order of Default has been granted.*

This notice is to inform you that you can object to the attached proposed *Judgment or Order*.

Uniform Trial Court Rule (UTCRC) 5.100<sup>1</sup> allows you to object to the proposed judgment or order. If you have no objections, you can sign the last page and return it to me.

## **If you do object to any of the terms of the judgment or order, you may:**

**1) Contact me within 7 days of the date of this notice.** If you contact me and we are not able to resolve your objections after reasonable efforts, I will include your objections with the proposed judgment or order when I submit it to the court.

or

**2) Submit your objections directly to the court.** If you intend to submit your objections directly to the court, notify me within 7 days of the date of this notice so that I can inform the court of your intentions when I submit the proposed judgment or order. If you do object to the proposed order or judgment, you must contact me within 7 days of the date of this notice.

November 13, 2019

Date

s/ Justin M. Baxter

Signature

Justin M. Baxter

Name (printed)

8835 SW Canyon Lane, Suite 130 Portland, OR 97225

Contact Address

503-297-9031

Contact Phone

City, State, Zip Code

<sup>1</sup> <http://courts.oregon.gov/OJD/programs/utcr/pages/utcrules.aspx>

1 CERTIFICATE OF SERVICE

2 I hereby certify that a true and correct copy of the foregoing document has been  
3 electronically filed with the clerk of the court using the electronic filing system which will  
4 send notice of such filing to counsel of record.

5 Respectfully submitted this 13th day of November, 2019.

6 s/ Justin M. Baxter

7 \_\_\_\_\_  
8 JUSTIN M. BAXTER, OSB 992178  
9 Baxter & Baxter, LLP  
10 8835 SW Canyon Lane, Suite 130  
11 Portland, Oregon 97225  
12 (53) 297-9031

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
Of Attorney for Plaintiffs