

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BRAD HUDAK, individually and on behalf of
all others similarly situated,

Plaintiff,

CASE NO.: 8:10-cv-1314-SCB-AEP

vs.

COLUMBIA RESTAURANT OF ST.
AUGUSTINE, INC.,

Defendant.

_____ /

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All consumers who received electronically printed receipts from the Columbia Restaurant located in Sarasota, Florida at the point of sale or transaction, in a transaction occurring from June 4, 2008 through September 30, 2009, and wherein the receipt displayed (1) more than the last five digits of the person's credit card or debit card number and/or (2) the expiration date of the person's credit card.

THIS IS NOT NOTICE OF A LAWSUIT AGAINST YOU. YOU MAY BENEFIT FROM READING THIS NOTICE, AND YOUR RIGHTS MAY BE AFFECTED BY THIS PROPOSED CLASS ACTION SETTLEMENT.

I. INTRODUCTION

This notice is to inform you of a proposed settlement of Plaintiff's claims in a lawsuit brought by Brad Hudak against the Columbia Restaurant in Sarasota ("Lawsuit") brought by counsel for the Plaintiff settlement class. This Lawsuit, which is pending in the United States District Court, Middle District of Florida, Tampa Division relates to electronically printed receipts from the Columbia Restaurant located in Sarasota, Florida between June 4, 2008 and the end of September 2009 where the receipt displayed (1) more than the last five digits of

the person's credit card or debit card number, and/or (2) the expiration date of the person's credit card.

II. BACKGROUND

On June 10, 2010, Plaintiff filed this proposed class action lawsuit. The defendant in the Lawsuit is the Columbia Restaurant in Sarasota. The complaint alleges that on March 2, 2009, Defendant Columbia Restaurant in Sarasota, provided Plaintiff with an electronically printed receipt on which Defendant printed the expiration date of Plaintiff's credit or debit card contrary to the Fair and Accurate Credit Transaction Act ("FACTA") codified as 15 U.S.C. Section 1681 c(g). As a consequence, Plaintiff alleges that he and similarly situated members of the Class are entitled to statutory damages. The Plaintiff does not allege, on behalf of himself or the Class, that he suffered any actual damages.

The Defendant asserts that a vendor was hired to properly update its credit/debit card terminals together with terminals at numerous locations of other Columbia restaurants, to provide a receipt with only the correct information printed on the receipt. The vendor correctly updated all of the Columbia restaurants' credit/debit card terminals with the exception of the terminals at the Columbia Restaurant in Sarasota. Defendant discovered its improperly working terminals and correctly updated them many months before this Lawsuit was filed. Defendant asserts the applicable statute does not provide for recovery of any damages under the circumstances in this case.

The Court has not made any decision concerning the merits of the Lawsuit or entitlement to damages. By settling, Defendant is not admitting that they have done anything wrong.

After protracted, arms-length negotiations, the parties have entered into a Settlement Agreement, which proposes to settle and resolve all of Plaintiff's and Settlement Class Members' claims against Defendant in this Lawsuit. As a result of the proposed settlement, the Court has (1) determined that this Lawsuit should proceed as a class action, for purposes of settlement only, with Brad Hudak as class representative, and (2) granted preliminary approval of the Settlement, subject to a fairness hearing to be held by the United States District Court for the Middle District of Florida, Tampa Division (the "Court") on December 15, 2011 at 9:00 a.m., at which hearing the Court will consider the fairness, reasonableness, and adequacy of the Settlement Agreement. The Court is located at Sam M. Gibbons U.S. Courthouse, 801 North Florida Avenue, Tampa, Florida 33602. You do not need to attend the hearing unless you wish to object and have filed a timely objection.

This Notice of Proposed Class Action Settlement is to advise you as a member of the settlement class ("Settlement Class Member") of the filing and the status of the Lawsuit and your rights with respect to a proposed settlement of the Plaintiff's and Settlement Class Members' claims in this Lawsuit (including certain rights that you can lose if you do not protect them). Those rights include the right to be excluded from the Settlement Class, as long as you submit a Request for Exclusion by the Opt-Out Deadline established by the Court (November 14, 2011) (see Section VIII. B. hereof). If you are a Settlement Class Member and do not request exclusion from the Settlement Class, you will be a Settlement Class Member if certification of the Settlement Class is finally approved, and you will be bound by the terms of the settlement. As a Settlement Class Member you also have the right to object to the Settlement and can be heard at the Fairness Hearing, provided you file written

objections with the Court by the Objection Date (November 14, 2011) and serve the objections on Class Counsel and Defendant's counsel by November 14, 2011, which meet the requirements set by the Court.

III THE KEY TERMS OF THE SETTLEMENT AGREEMENT

The key terms of the Settlement Agreement are as follows:

A. Settlement Class

The Settlement Class, which the Court conditionally certified consists of: all consumer cardholders who received electronically printed receipts from Columbia Restaurant in Sarasota at the point of sale or transaction, in a retail credit card or debit card transaction with Columbia Restaurant in Sarasota occurring between June 4, 2008 and September 30, 2009, wherein the receipt displayed (1) more than the last five digits of the person's credit card or debit card number, and/or (2) the expiration date of the person's credit card.

B. The Benefits of the Settlement Agreement

The benefits program of the Settlement provides for two forms of possible Benefits to Settlement Class Members: (1) Settlement Voucher, and (2) Defendant's continued compliance with FACTA. The details of these benefits are as follows:

1. Settlement Voucher:

All Settlement Class Members are eligible for a Settlement Voucher. The Settlement Voucher is good at the Columbia Restaurant of Sarasota for a one time, dine-in only, choice of 1905 Salad, Cuban Sandwich, or Half and Half Combo up to a maximum of \$10.00. The Settlement Voucher shall be good for a period of 120 days. To obtain the Settlement Voucher you must submit a properly completed and executed Claim Form for the Settlement

Voucher by the Claim Deadline for Settlement Voucher (November 14, 2011). If you do not submit your claim for Settlement Voucher by the Claim Deadline for Settlement Voucher (November 14, 2011), you will not receive a Settlement Voucher as a Settlement Class Member. To submit a claim for a Settlement Voucher you must use a computer to go online at the website www.carlsonlynych.com/class_settle.html to obtain a Claim Form. Then, complete and sign the Claim Form and return it by email to bcarlson@carlsonlynych.com or U.S. Mail to Michael L. Duncan, Esq., Volpe, Bajalia, Wickes, Rogerson & Wachs, 501 Riverside Avenue, 7th Floor, Jacksonville, Florida 32202-4934.

2. **Compliance with FACTA:**

The Columbia Restaurant in Sarasota has agreed to continue to abide by the truncation requirements of FACTA, as amended, or as it may be amended in the future.

C. **Class Notice and Settlement Administration**

Defendant has agreed to bear all costs associated with providing notice to the Settlement Class Members. In addition, Defendant has agreed to administer all claims and to bear all reasonable and necessary expenses incurred by it in administering the Settlement Agreement. These amounts do not reduce the Benefits available to Settlement Class Members and are in addition to and separate from all other consideration and Benefits paid to or available to the Settlement Class Members. Notice shall be provided by publication of the Notice of Proposed Class Action Settlement on the following website, www.carlsonlynych.com/class_settle.html, and by publication of notice in the Sarasota Herald Tribune. A notice directing consumers to the notice website will also be posted on the

premises of the Columbia Restaurant in Sarasota for a period of 90 days beginning August 15, 2011.

D. Attorneys' Fees and Expenses

Defendant has agreed to pay attorneys' fees, costs, and expenses to Class Counsel awarded by the Court up to the total amount of \$50,000.00. This amount does not reduce the benefits available to Settlement Class Members and is in addition to and separate from all other consideration and benefits paid to and available to the Settlement Class Members. Class Counsel has agreed not to seek any fees, expenses, or costs in addition to or in excess of this amount.

E. Incentive Award for Settlement Class Representative

Defendant has agreed to pay \$1,500.00 to the Settlement Class Representative in recognition of his efforts on behalf of the Settlement Class. This amount does not reduce the Benefits available to Settlement Class Members and is in addition to and separate from all other consideration and Benefits paid to and available to the Settlement Class Members. The Settlement Class Representative agrees not to seek or accept any amount in excess of the incentive award and any Benefits to which he is entitled under the Settlement.

IV. REASONS FOR THE SETTLEMENT

Class Counsel has investigated the facts underlying the Lawsuit for approximately 12 months and conducted informal and formal discovery. Class Counsel also has considered defenses available to Defendant and reviewed all defenses relating to the allegations in the Lawsuit. In addition, the parties have engaged in extensive and arms-length settlement negotiations beginning in February, 2011. As a result of these negotiations the parties were

able to reach a Settlement Agreement fully and finally resolving the claims of the Plaintiff and Settlement Class. The terms and conditions of this agreement are contained in the Settlement Agreement between Plaintiff, both individually and on behalf of the Settlement Class, and Defendant. The Settlement Agreement is subject to final approval of the Court.

Class Counsel believes that the terms of the Settlement Agreement are fair, adequate and in the best interests of the Settlement Class. Class Counsel reached this conclusion after investigating and considering among other things, the strengths and weaknesses of Settlement Class Members' claims against Defendant, the uncertainties inherent in this complex litigation, and the substantial benefits provided by the Settlement Agreement to the Settlement Class Members.

This Class Notice does not indicate any expression or opinion by the Court concerning the merits of the respective claims or defenses asserted in the Lawsuit. This Notice is sent merely to advise you of the Settlement and of your rights in connection with the Settlement.

V. RELEASES

Upon the entry of the Final Order and Judgment, in accordance with the Settlement Agreement, the Class Representative and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed with prejudice, relinquished and discharged all Released Claims.

Released Claims mean, collectively, any and all claims, including Unknown Claims as defined herein, demands, rights, liabilities and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual or

common law claims, whether known or unknown, whether or not concealed or hidden, against the Columbia Restaurant Releasees, or any of them, that accrued at any time on or prior to the Preliminary Approval Date for any type of relief, including, without limitation, damages (including statutory damages), unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney fees, litigation costs, restitution, or equitable relief, including but not limited to any and all claims in any way related to the publication of more than the last five digits of the cardholder's account number or the expiration date, upon a receipt provided to the cardholder at the point of sale or transaction.

VI. LIMITS OF CONSIDERATION AND BENEFITS

The Benefits and consideration to Plaintiff, the Settlement Class, and Class Counsel are exclusively those set forth in the Settlement Agreement, and Defendant shall have no further obligations in connection with the Settlement Agreement, the Settled Claims, or the Lawsuit.

VII. DENIAL OF LIABILITY

Defendant does not admit any wrongdoing or liability and vigorously denies the Settlement Class Representative's and Settlement Class Members' allegations. The Settlement Agreement is a compromise of disputed claims and does not mean that Defendant is liable for any of the claims or causes of action asserted by the Settlement Class Representative. The terms of the Settlement are a matter of public record and are not confidential. Any capitalized terms used in this Notice that are not defined herein shall have the meaning specified in the Settlement Agreement.

VIII. RIGHTS AND OPTIONS OF SETTLEMENT CLASS MEMBERS

As a Settlement Class Member, you have the following rights and options:

A. You May Become a Settlement Class Member

If you received an electronically printed receipt from the Columbia Restaurant located in Sarasota, Florida at the point of sale or transaction, in a transaction occurring between June 4, 2008 and September 30, 2009, and wherein the receipt displayed (1) more than the last five digits of your credit card or debit card number, and/or (2) the expiration date of your credit card number and you do not request exclusion from the Settlement Class, you will become a Settlement Class Member. Your interests will be represented by the Settlement Class Representative and Class Counsel. Class Counsel is: Michael L. Duncan, Esq. and Jamie W. Olinto, Esq., Volpe, Bajalia, Wickes, Rogerson & Wachs, 501 Riverside Avenue, 7th Floor, Jacksonville, Florida 32202-4934, and R. Bruce Carlson, Esq., Carlson Lynch, Ltd., 231 Melville Lane, P. O. Box 367, Sewickley, Pennsylvania 15143. You will not be charged for the services of Class Counsel. If the Settlement is approved by the Court and the Final Order and Judgment becomes final, you will be eligible to participate in the Benefits program as summarized above based upon the conditions contained in this Notice, the Claim Form, and the Settlement Agreement.

As a Settlement Class Member, you will be bound by all Orders and Judgments of the Court or other disposition of this Lawsuit, even if you do not submit a Claim Form. If the Court approves the Settlement, the Court will enter a Final Order and Judgment dismissing with prejudice all of your Settled Claims. Further, as a Settlement Class Member, you, your spouse, heir, associate, co-owner, attorney, agent, administrator, devisee, predecessor,

successor, assignee, trustee, representative of any kind, partner, or employee, will be deemed to have agreed to the terms of the release and discharge set forth above and in the Settlement Agreement.

B. You May Request Exclusion from the Settlement Class

If you request exclusion from the Settlement Class, you will not be bound by any Order, Judgment, or Settlement of this Lawsuit, and you will not receive the Benefits of the Settlement. A Settlement Class Member wishing to “opt out” or be excluded from the Settlement Class, must submit a typewritten Request for Exclusion stating: (1) the Class Member’s name, and (2) Class Member’s mailing address. The Request for Exclusion must be signed and mailed by 12:00 midnight November 14, 2011 to Edward M. Waller, Jr., Esq. and G. Calvin Hayes, Esq., Fowler White Boggs P.A., P. O. Box 1438, Tampa, Florida 33601. If more than 20 eligible Class Members request exclusion from the Settlement, Defendant shall have the option of terminating the Settlement Agreement at its sole discretion and if Defendant exercises this option the Settlement Agreement shall be deemed null and void *ab initio*.

C. You May Enter an Appearance in the Lawsuit Through Counsel of Your Choice

Settlement Class Members may enter an appearance in the Lawsuit through counsel of their choice. Class Members who elect to enter an appearance in the Lawsuit through counsel of their choice will be responsible for any attorneys fees or costs incurred as a result of this election.

D. You May Object to the Settlement Agreement

Settlement Class Members may object to the Settlement by filing a written objection with the Clerk for the United States District Court for the Middle District of Florida, Tampa Division. Any objection must be filed by the Objection Date (November 14, 2011). A copy of any objection must also be mailed to Edward M. Waller, Jr. and G. Calvin Hayes, Fowler White Boggs P.A., P. O. Box 1438, Tampa, Florida 33602, postmarked by midnight on the Objection Date (November 14, 2011). You cannot both request exclusion from and object to the Settlement Agreement. Only Settlement Class Members may object to the Settlement. The objection must include:

- (1) Sufficient proof to determine membership in the Settlement Class;
- (2) A statement of each objection asserted;
- (3) A detailed description of the facts underlying each objection;
- (4) A detailed description of the legal authorities supporting each objection;
- (5) A statement of whether the objector intends to appear and argue at the Fairness Hearing and, if so, how long the objector anticipates needing to present the objection; and
- (6) A list of the exhibits which the objector may offer during the Fairness Hearing, along with copies of such exhibits.

Any Settlement Class Member who does not make and serve their written objection in the manner prescribed above will be deemed to have waived any objections.

IX. THE FAIRNESS HEARING

The Court has given its preliminary approval to the Settlement, has conditionally certified the Settlement Class, and has approved appointment of the Settlement Class

Representative and Class Counsel. The Court will hold a hearing in the Courtroom of the United States District Court for the Middle District of Florida, Tampa Division, Sam M. Gibbons U.S. Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, on December 15, 2011 at 9:00 a.m., to determine whether, as recommended by the Settlement Class Representative and Class Counsel, it should confirm final certification of the Settlement Class, give final approval to the Settlement, grant the application for attorneys' fees and litigation expenses, grant Settlement Class Representative's incentive award, and make such other rulings incident thereto as are provided in the Settlement Agreement, including but not limited to executing the proposed Final Order and Judgment, which will dismiss with prejudice all of the Settlement Class Members' Settled Claims against the Columbia Restaurant Releasees. Attendance at the hearing is not necessary; however, any Settlement Class Member wishing to be heard orally in opposition to the Settlement must indicate this intention in his or her objection as explained above. Settlement Class Members who support the Settlement do not need to appear at the Fairness Hearing or take any other action to indicate their approval.

X. FURTHER PROCEEDINGS

If the Settlement is approved by the Court, and if you submit your Claim (using the required Claim Form) within the time set forth above with the appropriate information/documentation, you will be eligible for Benefits. If the Settlement is not approved or if it is approved but the Final Order and Judgment does not become final, the Settlement will terminate and be null and void, and the Court will vacate the conditional certification of the Settlement Class, appointment of the Settlement Class Representative and

Class Counsel, and the Lawsuit will proceed as though the Settlement Class had never been certified and the appointments had not been made.

XI. ADDITIONAL INFORMATION

Any questions you have about the matters in this Class Notice should be directed in writing to Class Counsel at Michael L. Duncan, Esq. and Jamie W. Olinto, Esq., Volpe, Bajalia, Wickes, Rogerson & Wachs, 501 Riverside Avenue, 7th Floor, Jacksonville, Florida 32202-4934. You may also receive information by visiting the website at www.carlsonlynch.com/class_settle.html.

DO NOT CONTACT THE COURT.

The content of this Notice is only a summary of the terms of the Settlement. If you wish to obtain a copy of the Settlement Agreement, you may do so by requesting it in writing from Class Counsel at: Michael L. Duncan, Esq. and Jamie W. Olinto, Esq., Volpe, Bajalia, Wickes, Rogerson & Wachs, 501 Riverside Avenue, 7th Floor, Jacksonville, Florida 32202-4934. You may, of course, seek the advice and guidance of your own attorney if you desire. The pleadings and other records in this litigation including the Settlement Agreement may be examined and copied at any time during regular office hours at the office of the Clerk for the United States District Court for the Middle District of Florida, Tampa Division.

**Dated: July 22, 2011
Tampa, Florida**

BY ORDER OF THE COURT