



people fall victim to invasion of their personal and financial privacy, including identity theft, whereby the victim's identity, unbeknownst to them, is assumed by the perpetrator—usually for financial gain.

4. Many identity thieves, commonly known as “carders,” further their stealthy trade by gleaning information from lost, discarded or stolen credit/debit card receipts, including credit card numbers and expiration dates. Some thieves, commonly known as “dumpster divers,” sift through trash in search discarded receipts; others have been known to frequent shopping malls and peruse streets, seeking misplaced receipts and stealing receipts from unguarded shopping bags.

5. Armed with only the last four digits and a card's expiration date, a skilled hacker can *reverse engineer* a credit card number and steal a victim's account.

6. Some criminals steal credit card information for the purpose of obtaining stolen money and goods; others hack credit card information for sport and post and/or sell hacked credit numbers over the Internet.

7. Recognizing this serious and potentially devastating threat to the nation's consumers, the United States Congress passed the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. § 1681 *et. seq.* (“FACTA” or the “Act”). FACTA contains numerous protections for American consumers, including detailed provisions requiring merchants to take certain measures to protect their consumers from identity theft. Among FACTA's safeguards is a national standard, requiring the truncation of information listed on credit and debit card receipts. In short, FACTA mandates (in part) that a credit card receipt may not contain more than the last five digits of the card number, or the card's expiration date.

8. Because of their unlawful conduct, Defendants are liable to Plaintiffs and the Class for damages determined in accordance with the Act.

### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 15 U.S.C. § 1681p.

10. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c). OSI does business in this district and a substantial part of the events and/or omissions giving rise to the claims asserted herein occurred in this district.

### **PARTIES**

#### **Plaintiffs**

11. Plaintiff Gerald D. Wells, Jr., is a resident of Bucks County, Pennsylvania. On at least three separate occasions, Plaintiff Wells made purchases from a “Carrabba’s Italian Grill” restaurant, located within this district. The electronically-printed receipts provided to Plaintiff Wells at the point of sale displayed the expiration date of his credit card.

12. Plaintiff Jennifer Ehrheart is a resident of Lawrence County, Pennsylvania. On at least one occasion, Plaintiff Ehrheart made purchases from a “Carrabba’s Italian Grill” restaurant, located within this district. The electronically printed receipt provided to Plaintiff Ehrheart at the point of sale displayed the expiration date of her credit card.

#### **Defendants**

13. Defendant OSI Restaurant Partners, Inc. is a Delaware corporation, with its principal place of business located in Tampa, Florida. It has numerous restaurants located in this district. Defendant OSI Restaurant Partners, Inc. is a “person that accepts credit cards or debit cards for the transaction of business” within the meaning of FACTA.

14. Without limitation, Defendants Does 1 through 10 include agents, partners, joint venturers, subsidiaries and/or affiliates of Defendant OSI Restaurant Partners, Inc. and, upon information and belief, also own and/or operate “Carrabba’s Italian Grill” restaurants. Each of Defendants Does 1 through 10 is a “person that accepts credit cards or debit cards for the transaction of business” within the meaning of FACTA. As used herein, where appropriate, the terms “OSI” and the “Company” are inclusive of Defendants Does 1 through 10.

15. Plaintiffs are unaware of the true names of Defendants Does 1 through 10. Defendants Does 1 through 10 are thus sued by fictitious names, and the pleadings will be amended as necessary to obtain relief against defendants Does 1 through 10 when the true names are ascertained, or as permitted by law or by the Court.

#### **FACTUAL ALLEGATIONS**

16. Identity theft is an enormous problem for American consumers. Credit card fraud is one of the principal threats facing American consumers in the 21<sup>st</sup> century.

17. While personal financial information is often stolen over the Internet through a variety of schemes, the majority of criminals obtain credit card information through traditional means. Robin Sidel, *Identity Theft—Unplugged—Despite the High-Tech Threat, When You Get Ripped Off, It’s Usually Still the Old Way*, Wall Street Journal, October 5, 2005, B1. These traditional methods include stealing credit card offers from mailboxes, rifling through trash (“dumpster-diving” or “trashing”), and the like. The Internet is full of advice and how-to guides for thieves interested in such schemes, often called “carders.” For instance, one site offers the following:

Having the card-holders name doesn't hurt, but it is not essential. The absolute best way to obtain all the information needed is by trashing. The way this is done is simple. You walk around your

area or any other area and find a store, mall, supermarket, etc., that throws their garbage outside on the sidewalk or dumpster.

See, <http://www.skepticfiles.org/new/086.htm>.

18. Thieves also obtain credit card receipts from consumers' personal trash, shopping bags and other places where discarded receipts are likely to be found. Armed with just the last four digits and expiration date, a skilled thief can reverse engineer a victim's card number.

19. "Carders" use stolen credit cards to purchase everything from large-ticket luxury items to small, everyday goods, such as groceries or fast food. Andrea Coombes, *Identity Thieves Steal to Buy Groceries—Easy and Risk: A Perfect Crime for Everyday Life*, Wall Street Journal, February 15, 2007, D3.

20. In response to the growing trend of identity theft, Congress passed FACTA. FACTA was signed into law on December 4, 2003. In recognition of the importance of consumer financial privacy, the Act provided, in part, that:

No person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.

15 U.S.C. § 1681c(g)(1).

21. The statute provided a transitional period for compliance. The truncation requirement became effective:

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

15 U.S.C. § 1681c(g)(3). Accordingly, with respect to machines in use prior to January 1, 2005, compliance was required as of December 4, 2006. With respect to machines first put into use after January 1, 2005, compliance was required as of the date a machine was first put into use.

22. Congress expressly provided for civil liability for willful noncompliance with the statute, including actual damages or statutory damages ranging between \$100 and \$1,000 per consumer, as well as punitive damages – underscoring the importance of protecting consumers’ financial information.

### **OSI Willfully Violated FACTA**

23. OSI, a publicly-traded corporation,<sup>1</sup> owns and operates over 1,200 restaurants throughout the United States. OSI operates restaurants under various brands, including: Carrabba’s Italian Grill, Bonefish Grill, Fleming’s Prime Steakhouse, Roy’s, Cheeseburger in Paradise, Blue Coral Seafood and Spirits and Lee Roy Selmon’s. OSI operates in all 50 states, through various subsidiaries, affiliates and partnerships, and reported over \$3.9 billion in sales for the year 2006. *See* 2006 Form 10-K.

24. OSI printed more than the last five digits or the expiration date on the credit and/or debit card receipts of Plaintiffs and members of the Class after the applicable date set forth in the statute.

25. Since the enactment of FACTA, OSI has had ample time to comply with the truncation requirements. The Company had three years to comply with respect to machines in use prior to January 1, 2005 and over one year to ensure that machines first put into use on or after such date were in compliance.

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<sup>1</sup> According to OSI’s 2006 Form 10-K annual report, filed with the Securities and Exchange Commission on March 1, 2007 (“2006 10-K”), it has plans to go private. On November 5, 2006, OSI entered into a definitive agreement to be acquired by a private investor group.

26. OSI willfully violated FACTA's truncation requirements. The Company knew or should have known of FACTA's requirements. Nonetheless, it willfully ignored the statute and failed to bring its machines into compliance before the promulgated date.

27. Indeed, prior to the effective date of the statute, credit/debit card issuers, such as Visa, MasterCard and others, informed retailers of the impending FACTA requirements. Certain issuers, including Visa and MasterCard, even implemented and informed retailers of their own similar truncation policies prior to FACTA's effective date.

28. For instance, on March 6, 2003, noting that identity thieves can use the information found on some credit card receipts to steal a person's identity, then-Visa CEO Carl Pascarella, together with United States Senators Dianne Feinstein, Judd Gregg, Jon Corzine and Patrick Leahy, announced new Visa regulations requiring truncation and prohibiting merchants from printing more than the last four digits on customer receipts.<sup>2</sup>

29. Numerous businesses across the United States have complied with FACTA and truncated their credit card receipts accordingly. It is simply impossible that OSI was, actually or constructively, unaware of its statutory obligations and the dangers those provisions were designed to protect. OSI, however, *chose* to ignore the statute and failed to ensure that each of its restaurants complied with FACTA.

### **CLASS ACTION ALLEGATIONS**

30. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following class of persons:

All persons who visited a Carrabba's Italian Grill restaurant and, at the point of a sale or transaction, were provided with an

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<sup>2</sup> Further, at least as early as 2001, a number of states passed legislation requiring truncation requirements similar to FACTA—providing that receipts display no more than the last five digits and no expiration date.

electronically-printed credit or debit card receipt containing more than the last five digits of the card number or the expiration date from any cash register or other machine or device in violation of FACTA during the applicable statutory period (the “Class”).

31. Excluded from the Class are OSI and its officers, directors, legal representatives, successors and assigns.

32. The Class is so numerous that joinder of all members is impracticable. OSI provides electronically-printed debit and credit card receipts for thousands of customers, identifiable through its own records.

33. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

34. Plaintiffs’ claims are typical of the claims of the members of the Class. Regardless of the FACTA effective date applicable to each machine at issue in this matter, the claims arise from the same statutory violation—the Company’s failure to properly truncate credit/debit card receipts. The Company’s underlying conduct and disregard of FACTA was the same, regardless of when each particular machine was put into use. OSI electronically printed credit/debit card receipts containing more than the last five digits or the expiration date at the point of the sale or transaction for Plaintiffs and each member of the Class.

35. There are questions of law and fact common to the Class, including but not limited to:

- a. When the OSI machines that electronically print credit/debit card receipts were put into use;
- b. Whether OSI printed more than the last five digits or expiration date on credit/debit card receipts;
- c. Whether the Company’s conduct violated FACTA;
- d. Whether OSI engaged in willful noncompliance of FACTA’s truncation requirements;

- e. Whether Plaintiffs and the Class are entitled to damages pursuant to 15 U.S.C. § 1681n(a)(1)(A) and, if so, the measure of such damages;
- f. Whether Plaintiffs and the Class are entitled to punitive damages pursuant to 15 U.S.C. § 1681n(a)(2) and, if so, the measure of such damages; and
- g. Whether equitable relief is appropriate to ensure that OSI ceases its unlawful conduct.

36. These and other questions of law and/or fact are common to the Class and predominate over any questions affecting only individual Class members.

37. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained counsel competent and experienced in complex, nationwide class action litigation. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs' counsel will fairly, adequately and vigorously protect the interests of the Class.

38. Class action status is warranted under Rule 23(b)(1)(A) because the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for OSI.

39. Class action status is also warranted under Rule 23(b)(1)(B) because the prosecution of separate actions by or against individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

40. Class action status is also warranted under Rule 23(b)(2) because OSI has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

41. Class action status is also warranted under Rule 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**CLAIM FOR RELIEF**

**VIOLATION OF 15 U.S.C. § 1681c(g)(1)**

42. Plaintiffs hereby incorporate by reference the preceding paragraphs as if they were fully set forth herein.

43. OSI willfully violated FACTA's truncation requirements. OSI printed more than the last five digits or the expiration date on the credit and/or debit card receipts of Plaintiffs and the Class, in violation of the statute.

44. OSI knew of, or should have known of, FACTA's legal requirements concerning the truncation of credit and debit card numbers and prohibition on printing of expiration dates. For example, but without limitation, several years ago, on information and belief, VISA, MasterCard, the PCI Security Standards Council (a consortium founded by VISA, MasterCard, Discover, American Express and JCB), companies that sell cash registers and other devices for the processing of credit or debit card payments, and other entities informed the Company about FACTA, including its specific requirements concerning the truncation of credit card and debit card numbers and the prohibition on the printing of expiration dates, and the Company's need to comply with the same.

45. Despite knowing and being repeatedly informed about FACTA and the importance of truncating credit card and debit card numbers and preventing the printing of expiration dates on receipts, and despite having had up to more than three years to comply with

FACTA's requirements, OSI willfully violated and continues to violate FACTA's requirements by, *inter alia*, printing more than five digits of the card number and/or the expiration date upon the receipts provided to members of the Class. Although OSI had ample time to comply with FACTA, the Company nonetheless ignored the statute and failed to bring its machines into compliance before the promulgated date.

46. Upon information and belief, OSI closely manages its restaurants, including tracking and maintaining information from each location. As such, OSI knew or should have known of both FACTA's truncation requirements and its restaurants' machines' non-compliance. Despite this information, the Company simply chose to ignore its obligation under FACTA—sacrificing the personal financial privacy of its customers.

47. Most of OSI's business peers and competitors readily brought their credit card and debit card receipt printing process into compliance with FACTA by, for example, programming their card machines and devices to prevent them from printing more than the last five digits of the card number and/or the expiration date upon the receipts provided to the cardholders. OSI could have readily done the same.

48. Accordingly, OSI willfully violated 15 U.S.C. § 1681c(g)(1) with respect to Plaintiffs and each member of the Class.

49. Plaintiffs and the Class are not required to prove actual damages. 15 U.S.C. § 1681n(a)(1)(A) provides for recovery of actual damages sustained or damages of not less than \$100 and not more than \$1,000 for each aggrieved consumer. Such provision ensures that individuals can enforce their right to financial privacy without the burden of showing pecuniary harm.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court enter a judgment against OSI and in favor of Plaintiffs and the Class and award the following relief:

A. This action be certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiffs as representatives of the Class and Plaintiffs' attorneys as counsel for the Class;

B. The conduct alleged herein be declared, adjudged and decreed to be unlawful;

C. An award of damages pursuant to 15 U.S.C. § 1681n(a)(1)(A) for Plaintiffs and each member of the Class;

D. Punitive damages pursuant to 15 U.S.C. § 1681n(a)(2);

E. Attorneys' fees and the Class' costs of suit, pursuant to 15 U.S.C. § 1681n(a)(3);

F. Appropriate equitable relief to ensure that the Company's unlawful conduct does not continue; and

G. An order granting Plaintiffs and the Class such other, further and different relief as the nature of the case may require or as may be determined to be just, equitable and proper by this Court.

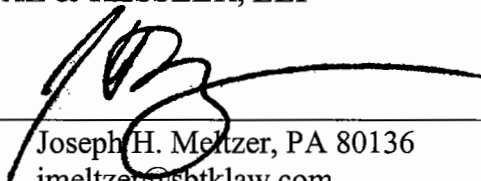
**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Dated: April 10, 2007

Respectfully submitted,

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