

As part of credit card lawsuit settlement

Olive Garden diners may be eligible for \$9 voucher

Sandra Pedicini

Sentinel Staff Writer

3:39 PM EDT, May 18, 2009

Did you eat at Olive Garden and pay with plastic a couple of years ago? If so, the restaurant chain may owe you a free appetizer.

Olive Garden could be the latest restaurant to fork over payment -- in the form of \$9 appetizer vouchers -- in settling a federal lawsuit over credit-card privacy.

The deal already has received preliminary approval in the Northern District of Illinois, with a final hearing set for July. It stems from a lawsuit in 2007 that accused Olive Garden of printing the last six digits of customers' credit-card numbers on receipts. The limit under the Fair and Accurate Credit Transactions Act is five.

Already, several thousand people have submitted voucher claims, said Chicago attorney Thomas Zimmerman, who represented the plaintiffs in the class-action lawsuit against the chain, part of Orlando-based Darden Restaurants. Zimmerman maintains that the glitch put patrons at risk of identity theft. But he could not cite anyone whose identity was stolen.

"This requirement to truncate the credit card numbers was widely publicized and was well known for years and the merchants had three years to comply before the law went into effect," said Zimmerman, who files class-action lawsuits on a variety of claims. "We don't know why the Olive Garden failed to comply."

The chain said in a statement that "Olive Garden takes its guests' data and its legal obligations very seriously." The statement said the problem was caused by a vendor, and that problematic slips "were provided only to the individual Olive Garden guests. Unfortunately, this mistake initially went unnoticed, but the problem was promptly remedied when it was brought to our attention. There is no indication that anyone has been harmed in any way by this error."

Diners who used debit or credit cards between Dec. 4, 2006, and Aug. 10, 2007, are eligible for vouchers.

The 2003 Fair and Accurate Credit Transactions Act covers a range of issues, such as mandating annual free credit reports for anyone who wants them. It also puts limits on how much debit- or credit-card information can be printed on receipts. Those limits went into effect in December 2006.

When restaurants and other establishments have printed more than the limits, lawsuits have

arisen.

"It is something where both very large and seemingly sophisticated and small and unsophisticated businesses both get caught," said Walter Olson, a senior fellow at the Manhattan Institute, who has a blog called Overlawyered.

Critics of such suits describe them as opportunistic, pointing out that no one generally reports any identity theft as a result of the breaches.

"It's like reckless driving in which no one had an accident and except for the lawyers, no one even noticed the car speeding," Olson said.

The lead plaintiff in the case was Mary Dudzienski of Illinois. Records show that Zimmerman represented Dudzienski in three other similar lawsuits. "A friend of hers had her identity stolen, so that's what made her interested in these types of cases," Zimmerman said.

Dudzienski could not be reached for comment.

According to the notice on Zimmerman's Web site, Dudzienski will be applying for an "incentive award" of \$2,500, which Darden has agreed to pay separately. Under the proposal, according to the notice, the company also has agreed to pay about \$130,000 to Zimmerman and \$5,000 to charity.

Who's eligible

Customers who ate at an Olive Garden in the United States and paid with a debit or credit card between Dec. 4, 2006 and Aug. 10, 2007, can fill out a form available at www.attorneyzim.com requesting a voucher. The PDF form is available under the heading "Class Action Notices." You can also call 1-866-890-4862. You don't have to provide proof of purchase but do have to sign a document certifying, under penalty of perjury, that you made the purchase. The voucher forms must be postmarked by June 4.