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## CLIENT ALERT

### The 7th Circuit Strikes Again!!!

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In a surprise decision, the Court of Appeals for the 7<sup>th</sup> Circuit reversed the District Court's dismissal of what is commonly known as the P.F. Chang matter. Plaintiffs John Lewert and Lucas Kosner received news about 2 months after they ate at P.F. Chang's China Bistro ("P.F. Chang's") in Northbrook, Illinois that the restaurant's computer system had been hacked. Data regarding debit and credit cards was stolen. A lawsuit resulted, the District Court (N.D. Ill.) dismissed for lack of standing. On April 14, 2016, citing *Remijas v. Neiman Marcus Grp., LLC*, 794 F.3d 688 (7<sup>th</sup> Cir. 2015) the Court of Appeals for the 7<sup>th</sup> Circuit reversed the district court's dismissal and remanded for further proceedings.

P.F. Chang's announced that 33 restaurants had data stolen. Only one of those restaurants was in Illinois (Woodfield Mall in Schaumburg Illinois). Kosner did not dine at the Woodfield Mall location, rather he ate at a P.F. Chang's in Northbrook, Ill and paid with his debit card on April 21, 2014. On June 8, 2014, four fraudulent transactions were made with Mr. Kosner's debit card. He canceled the card immediately. He learned about the P.F. Chang breach later in June and he noted that the fraudulent charges on his debit card were made shortly after he ate at P.F. Chang's in April. He believed the fraudulent charges were linked to the P.F. Chang breach and purchased a credit monitoring service. He spent \$106.89 on the service.

Plaintiff Lewert ate at the same Northbrook, Ill. P.F. Chang's restaurant as Mr. Kosner on April 3, 2014. Lewert also paid with his debit card. His facts were not as alarming as Mr. Kosner's in that he did not notice any fraudulent charges and did not cancel his card. He did spend time

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double checking his statements after the breach was announced to make sure there were no fraudulent transactions and that no accounts were opened in his name.

Lewert and Kosner's matters were consolidated and they seek class action status on behalf of all similarly situated customers. The District Court (N.D. Ill.) dismissed the consolidated action for lack of standing.

The Court of Appeals for the 7<sup>th</sup> Circuit reversed the District Court's dismissal. In its opinion the Court of Appeals concluded that plaintiffs have Article III Standing to proceed. The facts alleged by plaintiffs meet the 3 elements needed to satisfy Article III standing, they qualify as an immediate and concrete injury, assert causation and support redressability.

The Court did not rule on the merits or suitability for class certification.

For more information, or if you would like to discuss this or other cyber risks, please contact Dianna McCarthy at [mccarthy.d@wssllp.com](mailto:mccarthy.d@wssllp.com) or (212) 221-6900

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