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SUPREME COURT DETERMINES RETAILERS MAY NOT COLLECT ZIP CODES

By Darryl J. Horowitz and Helen E. Omapas

Many years ago, the California Legislature adopted the Song-Beverly Credit Card Act (“the Act”; Civil Code § 1747, et seq.). The intent was to make sure that credit card companies maintained consumer information in a confidential manner for the protection of card holders. (*Florez v. Linens & Things, Inc.* (2003) 108 Cal. App.4th 447, 450.) The Act prohibits credit card companies from collecting personal information at the point of sale (e.g., names, addresses and telephone numbers). (Civil Code § 1747.08.) Nothing in the Act, however, specifically stated that a retailer could not ask customers for their ZIP codes.

After the Act was enacted, retailers asked customers for their ZIP codes. The stated purpose was to determine where the customers were coming from in order for the retailer to know where new stores should be opened and how to attract business from those customers in the future. Williams-Sonoma was one such store. One of their customers, Jessica Pineda, sued Williams-Sonoma for asking for the ZIP code claiming it was a violation of the Act.

In the complaint, Pineda alleged, on behalf of a class of consumers, that taking the ZIP codes violated the Act because, when obtained during a credit card transaction, the retailer can look up the name of the purchaser using a reverse directory, in violation of the Act. Williams-Sonoma demurred to the complaint claiming that taking the ZIP codes did not violate the Act. Pineda also sued for violation of privacy.

Both the trial and appellate court found that asking for the ZIP code was not a violation of the Act. The California Supreme Court granted review and reversed the trial and appellate court. (*Pineda v. Williams-Sonoma Stores, Inc.* (February 10, 2011) ___ Cal.4th ___, 2011 WL 446921, 2011 Daily Journal D.A.R. 2278.)

Because the court was reviewing the sustaining of a demurrer, it did so by accepting that the facts in the complaint were true. Its job was thus to determine whether the facts as alleged (i.e., the collection of ZIP codes) were the collection of personal identification information in violation of Civil Code § 1747.08 of the Act. The court found that they were. It determined that a ZIP code is part of a person’s address and is further specific to an individual. The court further determined that its interpretation of the Act was consistent with the Legislative intent.

Williams-Sonoma argued that finding its conduct violated the Act was a violation of its due process rights as it would result in penalties that would approach “confiscation of [its] entire business.” This was rejected by the court finding that no set penalties are set forth in the Act.

Williams-Sonoma also sought to restrict any decision to prospective acts of retailers. The court rejected this as well as determining that the Act provided “adequate notice of the proscribed conduct, including its reference to a cardholder’s address as an example of personal identification information.” It thus determined the ruling could

be applied retroactively.

This is an important decision that affects all retailers who previously asked for ZIP codes for their credit sales. Even those retailers who asked for ZIP codes for all purchases will be affected as to those customers who provided ZIP codes for credit purchases.

What should a retailer do? Stop asking for ZIP codes when a credit transaction takes place.

Does this affect retailers who invite customers to receive e-mails and/or mailings from a retailer? It might, if the request is proximate to the time a credit transaction takes place. To avoid this, a retailer should consider separately placing a sign-up sheet next to the register for customers who want to add their name for e-mails and mailings. This may be enough to show that a request for personal identification information is not being sought in connection with a credit transaction.

Care should be taken because exposure to damages on a class-wide basis is not worth the limited information obtained when asking for ZIP codes. When coupled with the fact that the amount of damages that *could* be awarded is significant when applied to a class, and attorney's

fees are recoverable for such a claim, retailers should not seek such potentially confidential information.

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