

Client Alert.

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California Supreme Court Opens Potential Floodgate for Lawsuits Based on Retailers' Collection of Zip Codes

By David F. McDowell and Samantha P. Goodman

Retailers in California who request zip codes from customers paying by credit card should halt that practice immediately, brace for impending litigation, and join lobbying for a legislative correction of a decision for the Supreme Court. On February 10, 2011, the California Supreme Court issued a decision in the case *Pineda v. Williams-Sonoma Stores, Inc.* (S178241), stating that a retailer who requests and records zip codes from customers paying by credit card violates California's Song-Beverly Credit Card Act of 1971 and can be subject to penalties of up to \$1,000 per violation.

The statutory provision at issue is California Civil Code section 1747.08, which prohibits businesses from requesting that cardholders provide "personal identification information" during credit card transactions, and then recording that information. The question before the California Supreme Court was whether a cardholder's zip code alone constitutes "personal identification information." The California Supreme Court concluded that it does and that the act of requesting and recording a cardholder's zip code, without more, violates the Credit Card Act.

The California Supreme Court's ruling on this issue is significant because a violation of this provision of the Credit Card Act carries potentially large penalties. Civil Code section 1747.08(e) provides for a penalty not to exceed \$250 for the first violation and \$1,000 for each subsequent violation. Those penalties can be collected in a civil action brought by the person paying with the credit card or the Attorney General or local prosecutor. Thus, retailers who have been collecting zip codes from their credit card customers can expect an avalanche of litigation as plaintiffs' lawyers try to cash in on this newly approved claim.

Of course, these types of cases are not new and many businesses have already faced lawsuits alleging violations of Section 1747.08 based on their collection of zip codes from credit card customers. The number of those cases has been somewhat limited, however, by the existence of two Court of Appeal decisions holding that zip codes are not "personal identification information." In issuing its decision in *Pineda*, the California Supreme Court overturned and disapproved of those two Court of Appeal decisions, thus clearing the way for these types of claims to proceed. Unfortunately for retailers who had been collecting zip codes in reliance on those two Court of Appeal decisions, the California Supreme Court declined to make its interpretation of the statute prospective only, thus creating potential liability on behalf of retailers who had been collecting zip code information based on the earlier Court of Appeal decisions.

A few statutory exceptions provide some protection to this section of the Credit Card Act. Collection of "personal identification information" is permitted when a credit card is being used as a deposit or for cash advances, when the entity accepting the card is contractually required to provide the information to complete the transaction (like we understand some gas stations are required to do at the pumps) or is obligated to record the information under federal law or

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regulation, or when the information is required for a purpose incidental to but related to the transaction, such as for shipping, delivery, servicing, or installation. In all other circumstances, however, the law is now clear that collection of any “personal identification information” — even a zip code alone — constitutes a violation of the Act.

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