

Lawsuits Against Retailers Attack Collection of Zip Code at Point of Sale

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Five class action complaints have been filed against retailers in the California Superior Courts since mid-April 2008, raising yet another attack under California's Song Beverly Credit Card Act (California Civil Code Section 1747.08). While there have been a spate of class actions filed over the past several years which alleged that retailers violated this statute by requesting telephone numbers or email addresses, these new actions allege that the retailers' collection of customers' Zip Code information without other personally identifiable information violates the statute. Four of the cases were filed in San Diego County and one in Sacramento County.

The Song Beverly Credit Card Act (enacted in 1990 and twice amended) prohibits any person, firm, partnership, association or corporation that accepts credit cards for the transaction of business from:

1. Requesting or requiring, as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to write any personal identification information upon the credit card transaction form or otherwise;
2. Requesting or requiring, as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to provide personal identification information, which the person, firm, partnership, association, or corporation accepting the credit card writes, causes to be written or otherwise records upon the credit card transaction form or otherwise; and
3. Utilizing in any credit card transaction, a credit card form which contains preprinted spaces specifically designated for filling in any personal identification information of the cardholder. (CC 1747.08(a))

For purposes of the statute, “personal identification information” is defined as: “information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder’s address and telephone number.” (CC 1747.08(b))

There are limited exceptions to this statute—in cases where the card is being used for a deposit to secure payment in the event of default, loss, damage, or similar circumstance; for cash advance transactions; if the entity accepting the card is contractually obligated to provide personal identification information in order to complete the credit card transaction or obligated to collect and record the personal identification information by federal law or regulation; and if the information is required for a special purpose incidental but related to the transaction, including but not limited to information relating to shipping, delivery, servicing, or installation of the purchased merchandise or for special orders.

The statute specifically states that the entity accepting the credit card in a transaction is **not** prohibited from requiring the cardholder to provide reasonable forms of positive identification, which specifically may include a driver’s license or California state identification card or other photo ID. In such a case, the information contained in the photo identification can be viewed but cannot be recorded on the transaction form or otherwise. Likewise, if the transaction is a “card-not-present” transaction, the cardholder’s driver’s license number or state ID number may be recorded on the transaction form or otherwise. (CC1747.08(d))

The plaintiffs in these cases allege that they made a purchase and were asked to provide a Zip Code at the point of sale, which was then typed into the cash register. Plaintiffs believe that providing the Zip Code was required and they were not informed what would happen if they refused to provide it. They allege that by using the Zip Code and the credit card information the defendant could and did ascertain their home addresses, which were used to its economic advantage and to plaintiffs’ detriment. They allege that this collection of personal information violated the Song Beverly Credit Card Act and claimed (1) that plaintiffs represented a class of similarly situated individuals and (2) should be paid damages in the amount of \$1000 per transaction plus costs and legal fees.

The courts will ultimately determine whether a class action should be certified in any of these cases, whether this constitutes a violation of the statute’s prohibition against requesting or requiring provision of “personal identification information,” and whether this constitutes a violation of the state’s Unfair Competition Law (Business and Professions Code Section 17200). While we cannot predict the outcome of these cases, we thought the allegations would be of interest to our clients. We will be watching these cases carefully and will provide an advisory when they are concluded by either judgment or settlement.

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