

CA District Attorneys Enforce Amended Gift Card Law Against Major Retail Chain

by Greg L. Johnson, Deborah S. Thoren-Peden, Amy L. Pierce and Darcy L. Muilenburg

On August 13, 2009, Starbucks Corporation was permanently enjoined from failing to redeem gift cards with a value of less than \$10.00 for cash or check upon a consumer's request as required by Civil Code § 1749.5(b)(2). The company was also ordered to implement a compliance program and pay \$225,000.

On August 10, 2009, the Shasta District Attorney's Office, on behalf of the People of the State of California, after a multi-jurisdictional investigation, filed a complaint against Starbucks Corporation ("Starbucks") in connection with Starbucks' alleged failure to redeem gift cards and gift certificates with a value of less than \$10.00 pursuant to California Civil Code § 1749.5(b)(2). Senate Bill 250, signed into law by Governor Schwarzenegger on October 13, 2007 and effective January 1, 2008, amended Civil Code § 1749.5 to provide that any gift certificate (including a gift card) "with a cash value of less than ten dollars (\$10) is redeemable in cash for its cash value."¹ Section 1749.5(h) clarifies that "'cash' includes, but is not limited to, currency or check. If accepted by both parties, an electronic funds transfer or an application of the balance to a subscriber's wireless telecommunications account is permissible."

The Allegations

The three-page complaint alleges, in part, that Starbucks "did fail to redeem any gift card or gift certificate with a value of less than TEN DOLLARS (\$10.00) for check or cash upon the request of a consumer, in violation of California Civil Code Section 1749.5" (Complaint, ¶ 5), and "did engage in acts of unfair competition within the meaning of California Business and professions Code Section 17200 as follows: a. Violating California Civil Code Section 1749.5, as more fully described in Paragraph 5 above" (Complaint, ¶ 6). The complaint, in addition to seeking a permanent injunction, sought civil penalties of \$2,500 for each unlawful business act or practice, costs incurred in the investigation of the action and restitution.

¹ For more information regarding California's amended gift card law, please see our Client Alert entitled New California Gift Card Amendment Requires Cash Back on Request for Balances Under \$10.

Starbucks Ordered to Implement a Compliance Program

As part of the Stipulated Judgment, Starbucks is ordered to implement a compliance program at all of its company-owned stores located in California, which includes adapting its point of sale (POS) devices to have a button that will allow employees to redeem any gift card with a value of less than \$10 for cash or check. Starbucks is also required to develop a gift card cash back procedure, to post the procedure where it is easily visible by employees (the procedure is to remain posted until September 15, 2011), and to train its employees on the new procedure and use of Starbucks' POS device to redeem a gift card for cash or check upon request by a consumer.

Starbucks is also ordered to post a POS policy sticker on the back of all store POS devices stating that "Starbucks Cards valued under \$10 are refundable in store" or equivalent words; the stickers are to remain in place until March 31, 2011. In addition, Starbucks was ordered to post a written customer notice in a conspicuous location in each store notifying customers of their right to redeem gift cards with balances of less than \$10.00; the notices are to remain in place until September 15, 2009.

Starbucks Ordered to Pay a Civil Penalty, Investigative Costs and Cy Pres Restitution

Pursuant to Business & Professions Code § 17206, Starbucks is ordered to pay a civil penalty of \$195,000, a penalty that is to be shared amongst the counties who participated in the investigation and prosecution. It is also ordered to pay \$20,000 for investigative costs and, pursuant to Section 17203, cy pres restitution in the amount of \$10,000 to the Consumer Protection Prosecution Trust Fund.

Summary

In order to ensure compliance with Section 1749.5, merchants, retailers and restaurants selling gift cards in California should review their internal and advertised policies and procedures regarding gift card redemption and make necessary changes to comply with, among other things, the cash-back-upon-request requirement. Merchants, retailers and restaurants should also engage in staff education and training efforts to ensure that employees conducting gift card transactions are aware of California's gift card law and, in particular, the cash-back-upon-request requirement, and are properly trained in how to comply. Failure to comply with Section 1749.5(b)(2)'s cash-back-upon-request requirement may leave gift card issuers vulnerable to investigation by law enforcement agencies as well as exposed to potential class action lawsuits under a variety of statutory and common law claims.

For further information, please contact:

Greg L. Johnson **(bio)**
Sacramento
+1.916.329.4715
greg.johnson@pillsburylaw.com

Deborah S. Thoren-Peden **(bio)**
Los Angeles
+ 1.213.488.7320
deborah.thorenpeden@pillsburylaw.com

Amy L. Pierce **(bio)**
Sacramento
+1.916.329.4765
amy.pierce@pillsburylaw.com

Darcy L. Muilenburg **(bio)**
Sacramento
+1.916.329.4779
darcy.muilenburg@pillsburylaw.com

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