

## The \$10 Limit: Court Clarifies California's Law on Redemption of Retail Gift Cards

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*The federal District Court, Southern District of California, issued the first decisions interpreting Section 1749.5(b) of California's Gift Card Law since its amendment in 2007 confirming that merchants have the right to refuse to redeem a gift card for cash where the balance is \$10 or more.*

In 2009, two class actions, *Marilao v. McDonald's Corp.* and *Rudd v. Borders, Inc.*, were filed in the United States District Court, Southern District of California, challenging the merchants' refusal to redeem gift cards for cash under California Civil Code § 1749.5(b)(1). Section 1749.5(b)(1) states that "[a]ny gift certificate<sup>1</sup> sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder." Its counterpart, Section 1749.5(b)(2), states that "[n]otwithstanding paragraph (1), any gift certificate with a cash value of less than ten dollars (\$10) is redeemable in cash for its cash value." Subdivision (b)(2) was added with the 2007 amendments to California's gift card law, effective January 1, 2008. The two actions challenged the merchants' refusals to redeem for cash the gift cards **regardless** of the balance on the cards. In the first post-2007 amendment decisions interpreting Section 1749.5(b)(1), the Southern District confirmed that merchants retain the right to elect to redeem gift cards for cash **or** exchange them for new cards where card balances equal or exceed \$10.<sup>2</sup>

In *Marilao v. McDonald's Corp.*, 632 F. Supp. 2d 1008 (S. D. Cal. 2009), the plaintiff alleged that when he attempted to redeem a gift card instead of dining at McDonald's, McDonald's refused to give him a refund. In *Rudd v. Borders, Inc.*, Case No. 09cv832 BTM (NLS) (S.D. Cal. 2009), the plaintiff alleged that she had received a Borders gift card that she desired to redeem for cash, but Borders' gift card policy on the back of its card stated that the card is "not returnable or redeemable for cash." Both complaints challenged the policies **under Section 1749.5(b)(1)**, alleging that they violate California's Unfair Competition Law ("UCL") and unjustly enrich the merchants. Both McDonald's and Borders filed motions to dismiss the complaints.

### Section 1749.5(b)(1) Authorizes Merchants to Select Between Options

McDonald's and Borders' motions to dismiss were granted **with leave to amend**. The Southern District courts reasoned that **Section 1749.5(b)(1)** must be read in conjunction with Civil Code § 1448, which states that "[i]f an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation." As a result, McDonald's and Borders, as the performing parties, retained the right to elect to redeem the

gift cards for their cash value or exchange them for new gift cards since there were no allegations that the card balances were less than \$10. Also persuasive to the courts was Legislative Counsel of California Opinion 1488, dated February 11, 1997, which states, in relevant part: “[S]ection 1749.5 allows the merchant or other issuer to choose one of the available options to meet his or her obligation” and “does not require a merchant to redeem a gift certificate in cash whenever it is presented by a consumer.” The *Rudd* court also concluded that the addition of subdivision (b)(2) confirmed that subdivision (b)(1) was not intended to give consumers the unilateral right to cash out their gift cards. Both courts found that since the merchants’ policies did not violate Section 1749.5(b)(1), the predicate for the plaintiffs’ claims, the UCL and unjust enrichment claims failed because the merchants’ policies were not unlawful or unfair.

### Merchants Must Redeem for Cash Gift Cards With Balances of Less Than \$10 Upon Request

After the court issued the *Marilao* decision, the plaintiff amended his complaint to allege that when he attempted to redeem for cash a \$5 gift card, McDonald’s refused his request. He again contended that McDonald’s violated California’s UCL and was unjustly enriched by its practice of refusing cash redemptions, now challenging McDonald’s policy under Section 1749.5(b)(2). The *Marilao* court confirmed that Section 1749.5(b)(2) requires merchants to redeem for cash gift cards with balances of less than \$10 upon request. See 2009 WL 3007368 (S.D. Cal. 2009). Accordingly, the court found that the plaintiff had adequately alleged his standing to assert UCL and unjust enrichment claims based upon the alleged violation of §1749.5(b)(2). It dismissed the plaintiff’s claim that McDonald’s gift card policy on its card (*i.e.*, “card may not be redeemed for cash... unless required by law”) violated California’s False Advertising Law because plaintiff did not allege he relied on the language and, as a result, lost money or property. The plaintiff in the *Rudd* matter elected not to amend her complaint but instead dismissed it.

The takeaway, from the Southern District’s perspective, is that if a customer requests a cash refund for a gift card with a balance that equals or exceeds \$10, the merchant at its sole discretion may either issue a cash<sup>3</sup> refund or replace the gift card. In contrast, if the request involves a gift card with a balance less than \$10, the merchant is required to refund the gift card balance in cash to the customer upon request.

Mr. Johnson was the lead attorney for Borders’ defense in the *Rudd* matter. If you have any questions about this alert, please contact him, the Pillsbury attorney with whom you regularly work, or the other authors of this advisory.

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<sup>1</sup> The term “gift certificate” includes gift cards. Cal. Civ. Code § 1749.45(a).

<sup>2</sup> Prior to the amendment of Section 1749.5, California state courts reached different results regarding merchants’ rights under Section 1749.5(b)(1), some finding its language permissive and others mandatory.

<sup>3</sup> The term “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. See Cal. Civ. Code § 1749.5(h).

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