

Appellant Attempts to Re-litigate Issue of Whether Retailers that Collect Customer Zip Codes During Credit Card Transactions Violate California's Song Beverly Credit Card Act

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In a previous post, we noted that the California Supreme Court in *Pineda v. Williams-Sonoma Stores, Inc.*, [granted a petition to review](#) the issue of whether a retailer violates California's Song-Beverly Credit Card Act if, in connection with a credit card transaction, it records a customer's zip code for the purpose of later using it and the customer's name to obtain the customer's address through a reverse search database. The appeal is now fully briefed. The following are some of the more significant arguments proffered by each side, and the potential impact of the ruling on retailers.

The trial court sustained Williams-Sonoma's demurrer to Pineda's Section 1747.08 claim on the grounds that under *Party City Corp. v. Superior Court*, 169 Cal. App. 4th 497 (2008) ([discussed previously on this blog](#)), zip codes can never constitute "personal identification information" for purposes of that section. In its brief, Pineda asks the Supreme Court to disregard this well-reasoned precedent on the grounds that zip codes are expressly 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." Pineda argues that the trial court and court of appeal erred by inserting an additional criteria into the definition and requiring that the information be "unique" to the cardholder, rather than merely "concerning" the cardholder as set forth in the statute. In addition, Pineda argues that Williams-Sonoma preys on its credit card customers who are accustomed to providing their zip codes for legitimate verification purposes at gas stations and mistakenly assume that Williams-Sonoma is requesting their zip codes to process their credit cards. Meanwhile, according to Pineda, their sole intent is to use its customers' zip codes to "covertly" obtain their home addresses to build its customer database.

Williams-Sonoma, on the other hand, argues first that the question of whether a zip code is "personal identification information" was not certified for review by the California Supreme Court, thus, the court of appeal's decision in *Party City* stands. In addition, Williams-Sonoma argues that the Song Beverly Credit Card Act does not prohibit the **use** of information that is collected by a retailer at the point of sale. Instead, Song Beverly is silent as to any conduct other than the request and recording of "personal identification information" during a credit card transaction. Because a zip code has already been held to not fit within the definition of "personal identification information," the inquiry ends there - it cannot be transformed into "personal identification information" based on how the zip

code is used. Further, according to Williams-Sonoma, there is nothing improper about using zip codes to have third party vendors narrow down publicly available information about customers, such as their address.

How the California Supreme Court resolves this issue may have a substantial impact on retailers that collect customer zip codes. If the Supreme Court accepts Pineda's interpretation of Song Beverly that zip codes are "personal identification information," retailers could be left wondering what other conduct is prohibited, since neither "zip codes" nor "reverse data searches" are expressly mentioned in the language of the statute. In addition, after having relied on *Party City*, retailers could be left wondering whether they are now liable for this conduct under Song Beverly for up to \$1,000 per transaction.

This appeal has not yet been set for oral argument. We will keep you updated as to any developments.