
No. S178241

IN THE
SUPREME COURT OF CALIFORNIA

JESSICA PINEDA,
Plaintiff and Appellant,

v.

WILLIAMS-SONOMA STORES, INC., a California Corporation,
Defendant and Respondent.

After a Decision by the Court of Appeal of the State of California
Fourth Appellate District, Division One
Case No. D054355

On Appeal from the Superior Court of the County of San Diego
The Honorable Ronald S. Prager
Case No. 37-2008-00086061-CU-BT-CTL

**APPLICATION OF THE CONSUMER FEDERATION OF CALIFORNIA
AND THE PRIVACY RIGHTS CLEARINGHOUSE FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT JESSICA
PINEDA; *AMICUS CURIAE* BRIEF IN SUPPORT OF
APPELLANT JESSICA PINEDA**

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The Privacy Rights Clearinghouse

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CASE NO. S178241

IN THE
SUPREME COURT OF CALIFORNIA

JESSICA PINEDA,)
Plaintiff and Appellant,)
)
vs.)
)
WILLIAMS-SONOMA STORES, INC.,)
Defendant and Respondent.)
)
)
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APPLICATION OF THE CONSUMER FEDERATION OF CALIFORNIA
AND THE PRIVACY RIGHTS CLEARINGHOUSE FOR LEAVE
TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT
OF APPELLANT JESSICA PINEDA

To the Honorable Chief Justice of the California Supreme Court.

Pursuant to California Rule of Court 8.520(f), *amicus curiae*, the Consumer Federation of California and the Privacy Rights Clearinghouse (herein referred to as the "Applicants") respectfully request leave to file the accompanying *amicus curiae* brief in support of Appellant Jessica Pineda's position that the conduct of Defendant and Respondent Williams-Sonoma Stores, Inc. ("Williams-Sonoma") in requesting and recording its customers' zip codes during credit card transactions for the purpose of using the zip codes to obtain customers' home addresses

constitutes violations of California Civil Code Section 1747.08 ("Section 1747.08").

The Consumer Federation of California ("CFC") (www.consumercal.org) is a non-profit advocacy organization. Since 1960, CFC has worked to improve state and federal consumer protection laws. Each year, CFC testifies before the California Legislature on dozens of bills that affect millions of our state's consumers, including laws regulating food safety, predatory lending, health care and health insurance, telecommunications subscribers rights, construction defects, retail sales practices, consumer fraud, and access to civil justice, as well as other issue areas affecting consumer rights. CFC also appears before the California Public Utilities Commission and other state agencies in support of consumer regulations, and participates in court actions, as here, involving consumer law. In 2003, CFC was a founding member of Californians for Privacy Now, a coalition that helped to win enactment of the nation's strongest financial privacy law (Senate Bill 1 of 2003). Since then, CFC has testified in support of numerous pending pieces of legislation that would strengthen privacy rights and protections against identity theft.

The Privacy Rights Clearinghouse (PRC) is a non-profit consumer organization that advocates for and empowers consumers to take action to control their own personal information. Founded in 1992 in San Diego, California, the

PRC responds to specific privacy-related issues from consumers, intercedes on their behalf, and, when appropriate, refers consumers to the appropriate organizations and government regulatory agencies for further assistance. The PRC has been a vocal advocate for consumers' privacy rights in local, state, and federal public policy proceedings, including legislative testimony, regulatory agency hearings, task forces, and study commissions. The founder and director of the PRC is Beth Givens. She has developed the Fact Sheet series, consisting of more than 50 comprehensive consumer guides, as author and/or editor. She authored the encyclopedia entries on identity theft for *Encyclopedia of Privacy* (2007), *World Book Encyclopedia* (2004) and *Encyclopedia of Crime and Punishment* (2002). She is author of *The Privacy Rights Handbook: How to Take Control of Your Personal Information* (Avon, 1997) and is co-author of *Privacy Piracy: A Guide to Protecting Yourself from Identity Theft* (1999). She contributed a chapter on consumer and privacy rights to the 2006 book, *RFID: Applications, Security and Privacy*. Givens represents the interests of consumers in public policy proceedings at the state and federal levels (California Legislature, U.S. Congress, and federal and state regulatory agencies). She has participated in numerous task forces and commissions including: California Administrative Office of the Courts Working Group on Personal Information and Court Outsourcing, California Real ID Act Privacy & Security Work Group, California Radio Frequency ID Advisory

Committee, California Office of Privacy Protection Advisory Committee on Abandoned Records, California Secretary of State Voter Privacy Task Force, TRUSTe Wireless Advisory Committee, U.S. Decennial Census Advisory Committee, Justice Management Institute Advisory Committee on Electronic Access to Court Records, California Task Force on Criminal Records Identity Theft, California Legislature's Joint Task Force on Personal Information and Privacy, and the California Judicial Council's Subcommittee on Privacy and Access.

The legal issues involved in the subject Appeal are a matter of public interest, and Applicants' argument and authorities directly bearing on these issues are thereby appropriate and necessary. Specifically, Applicants' *amicus curiae* brief will address the following points: (1) a zip code is a powerful tool that retailers use to specifically identify their customers and obtain their home addresses; (2) retailers are using the Fourth District Court of Appeal's recent ruling in Party City as a free pass to collect customers' personal information in conjunction with credit card transactions; and (3) Williams-Sonoma's practice of obtaining California consumers' personal information under false pretenses is exactly what the Legislature sought to prohibit when enacting Section 1747.08.

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In summary, Applicants are vitally interested in the precedential outcome of this case because it will have a direct impact on the privacy rights of California consumers and, if decided against Appellant, will render California Civil Code Section 1747.08 meaningless. Section 1747.08 is the one and only statute that governs the type of information that retailers can collect from credit card customers at the point-of-sale. This statute is critical to protecting consumers' privacy rights and preventing the unnecessary collection and dissemination of consumers' personal identification information. Applicants therefore request the opportunity to file an *amicus curiae* brief, which Applicants believe will be of substantial assistance to the Court in resolving this proceeding. Applicants have reviewed the Appellate briefs in this case and are familiar with the questions involved in this case and the scope of their presentation.

Gene J. Stonebarger, one of the attorneys for Appellant Jessica Pineda, assisted in authoring the proposed amicus brief. No persons or entities have made any monetary contribution intended to fund the preparation or submission of the proposed amicus brief.

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For the foregoing reasons, and to more fully present the foregoing arguments, Applicant respectfully requests leave to file the attached *amicus curiae* brief.

DATED: May 27, 2010

Respectfully submitted,

ATKINS & DAVIDSON, APC

By: 

Todd C. Atkins
Attorneys for *Amicus Curiae*, the
Consumer Federation of California and
the Privacy Rights Clearinghouse

[PROPOSED] ORDER

The application of the Consumer Federation of California and the Privacy Rights Clearinghouse for permission to file an *amicus curiae* brief in support of Appellant Jessica Pineda in the above-entitled case having been considered, and proof having been made to the satisfaction of the Chief Justice that such permission should be granted,

IT IS HEREBY ORDERED that the Consumer Federation of California and the Privacy Rights Clearinghouse be, and hereby are, permitted to file the proposed brief combined with the application as Amicus Curiae herein.

IT IS FURTHER ORDERED THAT the *amicus curiae* brief of the Consumer Federation of California and the Privacy Rights Clearinghouse combined with the application for permission to file the brief hereby be filed with the Court.

IT IS FURTHER ORDERED THAT any answer to the *amicus curiae* brief be filed within 20 days of the filing of the *amicus curiae* brief.

DATED: _____, 2010

The Honorable Chief Justice of the
California Supreme Court

CASE NO. S178241

IN THE
SUPREME COURT OF CALIFORNIA

| | |
|----------------------------------|---|
| JESSICA PINEDA, |) |
| <i>Plaintiff and Appellant,</i> |) |
| |) |
| vs. |) |
| |) |
| WILLIAMS-SONOMA STORES, INC., |) |
| <i>Defendant and Respondent.</i> |) |
| |) |
| |) |

**AMICUS CURIAE BRIEF OF THE CONSUMER FEDERATION OF
CALIFORNIA AND THE PRIVACY RIGHTS CLEARINGHOUSE IN
SUPPORT OF APPELLANT JESSICA PINEDA**

I

INTRODUCTION

The California Legislature long ago recognized the dangers associated with collecting and maintaining consumers' personal identification information, finding that the practice put the physical safety of consumers at risk and jeopardized consumers' financial security due to identify theft and credit card fraud. In response, the Legislature enacted California Civil Code § 1747.8 *et seq.* in 1990 ("Section 1747.08") to protect privacy rights guaranteed to consumers by Article 1, Section 1 of the California Constitution. Section 1747.08 prohibits the collection of unnecessary personal identification information during credit card

purchase transactions. Cal. Civ. Code § 1747.08.

Section 1747.08 is the only California statute protecting consumers from having to provide unnecessary personal identification information during credit card transactions. Its purpose is more important now than ever. Identity theft has surpassed the drug trade as the number one crime in the United States.

Sophisticated computer hackers often target retailers and others that collect and store customers' personal information along with their credit card numbers. The very real and immediate dangers associated with this practice are highlighted in the numerous recent data security breaches affecting California consumers. For example, in 2007 and 2008 The TJX Companies, Inc. reported that hackers infiltrated its company database and stole over forty-five million customers' credit card numbers, as well as home addresses and drivers' license numbers. The breach led to massive identity theft and credit card fraud throughout the world. Retailers such as Williams-Sonoma are unnecessarily placing their customers at risk for identity theft by requesting their zip codes and then utilizing advanced technology to match their customers' names and zip codes with the respective customers' home addresses.

In enacting Section 1747.08, the Legislature was concerned that consumers were mistakenly being led to believe that the requested personal identification information was necessary to complete their credit card transactions, when in fact,

it was not. (See Appendix of Exhibits at Tab 3, p. 85, 106, 107, 135.) The purpose of Section 1747.08 “is to protect consumers from unwarranted invasions of privacy – i.e., having to provide personal information in credit card transactions where it is not needed by the card issuer for the transaction to be processed.” (See Appendix of Exhibits at Tab 3, p. 135.) Williams-Sonoma is alleged to be engaging in the exact conduct the Legislature sought to prohibit when it enacted Section 1747.08. If anything, customers are more likely to believe that their zip codes, as opposed to their addresses, are necessary to process their credit card transactions.

If Williams-Sonoma is allowed to request zip codes from its customers under the false pretense that zip codes are required to complete credit card transactions, and then utilize the zip codes, along with the customers’ names obtained from their credit cards, to obtain the customers’ respective home addresses, this would defeat the express purpose of Section 1747.08. Given the technology readily available today, prohibiting retailers from collecting addresses from credit card customers, but allowing them to request zip codes, is a distinction without a difference. Williams-Sonoma’s deceptive practice of collecting and using zip codes to obtain home addresses is actually a more serious violation of Section 1747.08, because customers do not know the scope of the personal information that they are giving up when they provide their zip code information.

II

ARGUMENT

A. A Zip Code is a Powerful Tool That Retailers Use to Specifically Identify Their Customers and Obtain Their Home Addresses.

The Legislature intentionally defined “personal identification information” broadly to prohibit the requesting and recording of any information concerning the cardholder that was not set forth on the credit card. Cal. Civ. Code § 1747.08(b). The Legislature was careful not to limit the breadth of the statute, by specifically “including, but not limiting” the application of the statute to prohibit the collection of telephone numbers and address information. Both the express language of Section 1747.08, and the legislative intent behind it, mandate that retailers must be precluded from requesting and recoding consumers’ zip codes in conjunction with credit card transactions.

Retailers have recently begun collecting customer zip codes during credit card purchase transactions because a zip code can be easily utilized to specifically identify a customer and obtain the customer’s home address. The customer is also less likely to object to a request for his or her zip code than a direct request for the customer’s entire address. It would contravene the express purpose and spirit of Section 1747.08 to prohibit retailers from collecting customers’ home addresses during credit card transactions but allow them to obtain this very information – covertly – by requesting and recording zip codes.

Disclosure of zip code information during credit card transactions additionally creates a risk of harassment and credit card fraud. An employee or hacker who obtains a customer's name and zip code can use readily available internet services to easily look up the customer's address and phone number based on the known name and zip code. The name, credit card number, and address are all the thief needs to use the customer's credit card number at internet sites that verify the cardholder's billing address during online credit card transactions. These are the very situations and scenarios that Section 1747.08 is intended to prevent.

Given the technology available today, there is little practical distinction between a request for a zip code and a request for an address. Section 1747.08 and the legislative intent behind it are at a cross road. If the Court allows retailers such as Williams-Sonoma to request zip codes from credit card customers, it will mark the end of Section 1747.08. Retailers will be free to build their marketing databases with unsuspecting consumers that provide their zip codes believing they are necessary as a security measure to complete their credit card transactions, when they are not. These databases will remain at risk to employees that want to harass customers or steal their information, and computer hackers that may steal the entire database.

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Using a customer's name and zip code is extremely effective to obtain the customer's home address because customers are less likely to object to a request for their zip code since they believe it is being used to verify their credit cards. Consumers have become accustomed to this common practice at gas stations, where zip codes are required by credit card companies as part of the transaction. But gas stations are required to verify zip codes by credit card companies during "pay at the pump" transactions, and they are legitimately using the zip codes as a necessary security measure since there is no live person present to check the cardholder's identification, and no signature is being provided or compared to the signature on the card. However, in this context, the zip code information is being provided to the issuing bank for the credit card to verify the billing address of the cardholder and this billing address information is not provided to or shared with the gas stations. Customers naturally believe that retailers such as Williams-Sonoma are likewise requesting their zip codes to protect them from identity theft and credit card fraud when, in reality, these retailers are placing them at these very risks by collecting and storing their names, credit card numbers, zip codes, and home addresses, along with other specific information about the customers, in massive databases that are often targeted by dishonest employees and computer hackers.

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B. Retailers Are Using The Fourth District Court of Appeal's Recent Ruling in Party City as a Free Pass to Collect Customers' Personal Identification Information in Conjunction with Credit Card Transactions.

Applicants are aware of the Fourth District's recent opinion in Party City Corp. v. Superior Court, (2008) 169 Cal.App.4th 497, finding that under the record in that case, zip codes do not constitute personal identification information for purposes of Section 1747.08. Applicants respectfully submit that the underlying assumptions relied on by the Party City Court were inaccurate. The Court appeared to be operating under the mistaken conclusion that zip codes are not helpful (or only marginally helpful) to specifically identify customers or obtain their home addresses. This simply is not the case. The latest trend for retailers to identify their customers and obtain their home addresses is to request and record their zip codes at the point-of-sale. Retailers have become further emboldened by the Party City decision, which is being waved around as an absolute bar to liability even where a retailers' single purpose for requesting zip codes is to identify and obtain its customers' home addresses. Party City has paved the way for retailers that have specifically identified millions of their customers and obtained their home addresses to argue that a zip code is not personal identification information. This begs the question, if a name and zip code is all a retailer needs to identify and obtain a customer's home address, and the retailer is actually using zip codes to identify its customers and obtain their home addresses, how can a zip code not

constitute “personal identification information”?

Given the current identity theft crisis facing Californians, Courts should be interpreting consumer protection statutes as broadly as possible. Indeed, Section 1747.08 is the only California statute protecting consumers against the unnecessary collection of personal identification information during credit card transaction. It should not be interpreted in a fashion that allows retailers such as Williams-Sonoma to circumvent the protections provided by the Legislature.

C. Williams-Sonoma’s Practice of Obtaining California Consumers’ Personal Identification Information Under False Pretenses is Exactly What the Legislature Sought to Prohibit When Enacting Section 1747.08.

Justice cannot tolerate a situation where retailers are collecting zip codes from customers under the false pretense of needing them to process their credit card transactions, covertly capturing customers’ names from their credit cards, and then utilizing all of this information with advanced technology to specifically identify the customers’ home addresses. Because this information is then stockpiled with additional information about customers, including their credit card numbers, consumers are exposed to potential security breaches which can lead to mass-scale credit card fraud and identity theft. It is vital that consumers be protected from information being collected and stockpiled about them without their knowledge. The Legislature understood the importance of this issue when enacting Section 1747.08. In enacting Section 1747.08, the Legislature was

concerned that consumers were mistakenly being led to believe that the requested personal identification information was necessary to complete their credit card transactions, when in fact, it was not. (See Appendix of Exhibits at Tab 3, p. 85, 106, 107, 135.) The purpose of Section 1747.08 “is to protect consumers from unwarranted invasions of privacy – i.e., having to provide personal information in credit card transactions where it is not needed by the card issuer for the transaction to be processed.” (See Appendix of Exhibits at Tab 3, p. 135.)

California consumers would be appalled to discover that retailers such as Williams-Sonoma are using their zip codes to obtain their home addresses, and that this information is then stored along with their credit card numbers and made available to others. Retailers certainly do not disclose their intentions when they request customers’ zip codes. Imagine the response if Williams-Sonoma were to pose the following question to credit card customers: “May we have your zip code so we can use it to obtain your home address that we will store with your credit card number and purchase history, which we will also make available to others?” It would be offensive merely to ask.

Retailers do not disclose their intentions when requesting zip codes because they realize such a request would offend their customers. Consumers protect their privacy rights in their home addresses. They certainly protect this information in connection with credit card transactions when their credit card numbers are being

made available to retailers such as Williams-Sonoma, and their clerks and partners. Consumers have a reasonable expectation of privacy in keeping their home address private from retailers during credit card transactions. The law prohibits retailers from obtaining customers' home addresses during credit card transactions, and consumers mistakenly believe that retailers are requesting their zip codes as a security measure. Williams-Sonoma's practice is offensive and constitutes a clear violation of Section 1747.08.

III

CONCLUSION

Section 1747.08 should be liberally construed towards fostering its objectives of curtailing the collection of personal identification information that is not necessary to complete credit card purchase transactions. A rule allowing retailers to collect zip codes, which are easily used to obtain home addresses, would destroy the protections provided by the Legislature through Section 1747.08. For the foregoing reasons, the Consumer Federation of California and the Privacy Rights Clearinghouse as *Amicus Curiae*, respectfully requests that this

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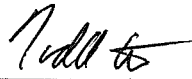
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Court reverse the Appellate Court Opinion in this case, vacate the Trial Court's Judgment and remand this case to the Trial Court for further proceedings.

DATED: May 27, 2010

Respectfully submitted,

ATKINS & DAVIDSON, APC

By: 

Todd C. Atkins
Attorneys for *Amicus Curiae*, the
Consumer Federation of California
and the Privacy Rights Clearinghouse

CERTIFICATION OF LENGTH

I, Todd C. Atkins, hereby certify as follows:

1. I am one of the attorneys for the Consumer Federation of California and the Privacy Rights Clearinghouse, *Amicus Curiae* herein.
2. The word count of this document is 3,520 words, according to the word count function of the computer program used to prepare it.
3. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief and would competently testify to such if called as a witness.

Executed this 27th day of May, 2010, at San Diego, California.



TODD C. ATKINS

PROOF OF SERVICE

I am a citizen of the United States and am employed in San Diego County. I am over the age of eighteen (18) years and not a party to this action; my business address is 101 W. Broadway, Suite 1050, San Diego, CA 92101.

On May 28, 2009, I caused to be served the below named document by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as follows:

APPLICATION OF THE CONSUMER FEDERATION OF CALIFORNIA AND THE PRIVACY RIGHTS CLEARINGHOUSE FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT JESSICA PINEDA; *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT JESSICA PINEDA

XX **BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

— **BY U.S. MAIL - CCP §1013a(1).** I am personally and readily familiar with the business practice of Atkins & Davidson, APC for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at San Diego, California.

See Attached Service List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on May 28, 2009.



Todd C. Atkins

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