

SUPREME COURT COPY

No. _____

S170241

IN THE
SUPREME COURT OF CALIFORNIA

JESSICA PINEDA,
Plaintiff and Appellant,

SUPREME COURT
FILED

v.

NOV 25 2009

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

Frederick K. Ohlrich Clerk
Deputy

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

PETITION FOR REVIEW

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Plaintiff and Appellant,)
)
vs.)
)
WILLIAMS-SONOMA STORES, INC.,)
Defendant and Respondent.)
)
)

PETITION FOR REVIEW

ISSUES PRESENTED

1. Does a zip code constitute “personal identification information” for purposes of California Civil Code Section 1747.08, which expressly defines “personal identification information” 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”?

2. Does Williams-Sonoma’s company-wide practice of requesting and recording customers’ zip codes during credit card transactions, for the purpose of using the zip codes to obtain the respective consumer’s home addresses, and not for any required security or verification purpose, constitute a violation of California Civil Code Section 1747.08?

3. Does Williams-Sonoma’s company-wide practice of collecting its customers’ zip codes during credit card transactions under the

guise of needing the zip codes to process their credit card transactions, and then covertly using the respective consumer's name, credit card number and zip code to obtain the consumer's personal private information, including their home addresses, constitute an invasion of the consumer's constitutionally protected privacy rights?

INTRODUCTION

Williams-Sonoma Stores, Inc. is obtaining the home addresses of their credit card customers through deception during credit card transactions. Williams-Sonoma collects zip codes from its customers during credit card transactions under the false pretense that they are required to complete the transactions. It then utilizes the respective consumer's zip code along with the customer's name obtained from the credit card, to acquire the consumer's home address without the customer's knowledge or consent. This is accomplished with the help of customized software and one or more third-party credit reporting agencies with proprietary databases that allow Williams Sonoma to "match" a credit card customer's name and zip code with their home address. The Fourth Appellate District, Division One ruled that Williams Sonoma's alleged conduct does not violate California Civil Code section 1747.08 and does not constitute an invasion of privacy. *See* Opinion, attached hereto as Exhibit A pursuant to Rule 8.504(b)(4). This ruling contradicts the plain language of section 1747.08, including the express definition of "personal identification information" supplied therein, and defeats the purpose of the statute as evidenced by its legislative history.

Prior to the Fourth District Court of Appeal's rulings in connection with this case, and the recent Party City decision discussed below, the great majority of trial courts were properly concluding that a credit card customer's zip code is "personal identification information" for purposes of

Section 1747.08. Indeed, the trial court in the seminal Party City case reached this conclusion prior to being reversed by the Fourth District. The recent Fourth District rulings effectively gut Section 1747.08 by creating a readily available loophole that allows retailers to circumvent the statute and obtain credit card customers' home addresses by collecting their zip codes at the point-of-sale.

The issues presented in this Petition for Review are important questions of law that affect the privacy rights of every California citizen. Retailers are deceptively obtaining specific personal identification information through credit card transactions from hundreds of thousands of California consumers every day. This issue is ripe for Supreme Court review and it is relevant to every California resident, as it affects the ability of California residents to protect the privacy rights in their home address information and their ability to keep this information separate from their credit card information.

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 (herein "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. 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 engaging in the exact conduct the Legislature sought to prohibit when it enacted Section 1747.08.

To accomplish the remedial purposes of Section 1747.08, 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.

Williams-Sonoma’s practice of surreptitiously collecting customers’ zip codes under the false pretense of needing them to process their credit card transactions, and then covertly using respective consumer’s name and zip codes to obtain respective consumer’s private personal information, including his/her home address, further constitutes an invasion of the respective consumer’s constitutionally protected privacy rights.

In its Opinion, the Court of Appeal made numerous legal findings that are unsupported by California law and which defeat the legislative purposes of Section 1747.08. The main points of error include the following:

First, the Court of Appeal ignored the express definition of “personal identification information” that appears in Section 1747.08.

Second, the Court of Appeal erred by strictly construing this remedial consumer protection statute.

Third, the Court of Appeal misconstrued Section 1747.08 in a way that defeats its intended purposes of protecting consumers from having to provide unnecessary information that might allow a store employee to harass or make unwanted contact with the customer, to protect consumers from potential identity theft, and to prevent retailers from compiling consumers' "personal identification information" for their own marketing purposes and without the consumers' knowledge or consent.

Fourth, the Court of Appeal blindly followed and extended the ruling of another panel of the same Court of Appeal reached in Party City Corp. v. Superior Court, (2008) 169 Cal.App.4th 497 ("Party City") regarding whether a zip code is included in the definition of "personal identification information" in Section 1747.08, without conducting its own independent analysis of the law and facts in this case.

Fifth, the Court of Appeal erred in finding that Williams-Sonoma's conduct did not amount to an offensive intrusion of Plaintiff Jessica Pineda's (herein "Pineda") privacy.

These errors have resulted in an Opinion that is deserving of this Court's review and correction. Review also is warranted given the substantial impact the Opinion will have on California consumers and retailers statewide. If retailers are allowed to collect zip codes during credit card transactions, which they can easily use to obtain a cardholder's home address, then Section 1747.08 will be rendered void and toothless since every retailer will be able to easily circumvent the statute.

WHY REVIEW SHOULD BE GRANTED

This Court may grant review “to secure uniformity of decision or to settle an important question of law.” (Cal. Rules of Court, Rule 8.500(b)(1)). The Court’s review is needed to further both of these purposes.

A. “Important Questions of Law”

The issues presented in this Petition for Review are important questions of law that affect the privacy rights of every California citizen. Retailers are deceptively obtaining specific personal identification information through credit card transactions from hundreds of thousands of California consumers every day. This issue is ripe for Supreme Court review and it is relevant to every California resident, as it affects the ability of California residents to protect the privacy rights in their home address and their ability to keep this information separate from their credit card information.

Indeed, the Court of Appeal characterized the issues set forth in this appeal as involving “a matter of continuing public interest based on numerous similar actions filed statewide.” (Opinion, p. 3). There are in fact numerous putative class actions pending across the state wherein these identical issues are presented. Supreme Court review at this time would preserve judicial resources, in that these same issues are likely to be presented to each of the Appellate Districts in California if this important question of law not settled now.

B. “Uniformity of Decision”

Review also is appropriate to “secure uniformity of decision.” (Cal. Rules of Court, Rule 8.500(b)(1)). The Court of Appeal (Fourth District, Division 1) *strictly* construed Section 1747.08 in finding zip codes are not banned “personal identification information.” The Court of Appeal’s strict construction not only generally conflicts with well-established California

precedent, but is contrary to the liberal construction the Court of Appeal (Fourth District, Division 3) in Florez gave Section 1747.08 due to its remedial purpose. Florez v. Linens 'N Things, (2003) 108 Cal.App.4th 447, 450. This Court's review is necessary to resolve the existing conflict among the different divisions of the Courts of Appeal.

FACTUAL AND PROCEDURAL HISTORY

A. The Facts

In sum, Williams-Sonoma (1) deceptively requests its credit card customers' zip codes under the guise of needing them to process their credit card transactions, which customers are accustomed to providing at gas stations, (2) covertly captures customers' names from their credit cards, and (3) utilizes all of this information to pinpoint and specifically identify the respective consumers' home addresses with the help of one or more third-party credit reporting agencies.

The Court of Appeal accurately set forth the factual recitations alleged in the complaint and assumed the truth of these facts pursuant to Palacin v. Allstate Ins. Co., (2004) 119 Cal.App.4th 855, 861, as follows:

Jessica Pineda visited a store in California owned by Williams-Sonoma and selected an item to purchase. Opinion, p. 2. She then went to the cashier to pay for the item with her credit card. Id. The cashier asked for her zip code, but did not tell her the consequences if she declined to provide the information. Id. Believing that she was required to provide her zip code to complete the transaction, Pineda provided the information. Id. The cashier recorded it into the electronic cash register and then completed the transaction. Id. At the end of the transaction, the Williams-Sonoma had Pineda's credit card number, name and zip code recorded in its databases. Id.

After acquiring this information, Williams-Sonoma used customized computer software to perform reverse searches from databases that contain millions of names, e-mail addresses, residential telephone numbers and residential addresses, and are indexed in a manner that resembles a reverse telephone book. Id. Williams-Sonoma's software then matched Pineda's now-known name, zip code or other personal information with her previously unknown address, thereby giving the Store access to her name and address. Id. Williams-Sonoma then maintains all this information in a database. Id.

Pineda alleged that this conduct violated Section 1747.08, and also claimed that Williams-Sonoma invaded her privacy by: requesting and recording her zip code; using this information, without her knowledge, to obtain her address; and viewing, printing, distributing and using her address for its own profit. Opinion, p. 3.

B. Procedural History

Pineda filed her Complaint against Williams-Sonoma on June 18, 2008. (Exhibit 1¹, pp. 1-14.)

On or about July 12, 2008, Williams-Sonoma filed a demurrer to the Complaint arguing (1) that zip codes can never constitute "personal identification information" as that term is defined in Section 1747.08, and (2) that Pineda did not, and could not allege a protectable privacy right, or a reasonable expectation of privacy in her home address, or any other information acquired by Williams-Sonoma. (Exhibits 2-4, pp. 15-314.)

On or about September 15, 2008, Pineda filed her Opposition to Williams-Sonoma's Demurrer. (Exhibits 5-6, pp. 315-361.) And on or

¹ For the purposes of convenience, all references to "Exhibit" shall refer to the Appendices submitted by Pineda to the Court of Appeal, unless otherwise noted.

about September 19, 2008, Williams-Sonoma filed its Reply Brief. (Exhibits 7-8, pp. 362-370.) The hearing on the Demurrer was held on October 2, 2008, and on October 3, 2008, the Trial Court entered an Order sustaining the Demurrer. (Exhibit 11, pp. 386-389.)

The Trial Court sustained Williams-Sonoma's demurrer to Pineda's Section 1747.08 claim on the grounds that zip codes can never constitute Personal Identification Information for purposes of that section. *Id.* Based largely on its erroneous belief that Pineda's invasion of privacy cause of action was predicated on Williams-Sonoma's violations of Section 1747.08, the Trial Court also sustained Williams-Sonoma's Demurrer to the invasion of privacy cause of action. *Id.* The basis for the Trial Court's ruling is also set forth in the transcript of the October 2, 2008 hearing, which has been designated under the California Rules of Court, Rule 8.130, as the Reporter's Transcript on Appeal.

Following the Order sustaining Williams-Sonoma's demurrer, judgment was entered by the Trial Court on October 29, 2008. (Exhibit 13, pp. 395-401.) The Notice of Entry of Judgment was served on Pineda by mail on October 31, 2008. (Exhibit 14, pp. 402-411.)

Pineda filed her Notice of Appeal from said Judgment on December 22, 2008, along with her Notice of Election to Proceed Under California Rules of Court, Rule 8.124, and Notice Designating Reporter's Transcript Under California Rules of Court, Rule 8.130. (Exhibit 15, pp. 412-414.)

The Court of Appeal filed its Opinion in this matter on October 8, 2009. On October 23, 2009, before this decision became final, the Court of Appeal filed an Order Certifying Opinion for Publication. As such, pursuant to California Rules of Court, Rule 8.264(b)(3), the decision of the Court of Appeal became final on November 22, 2009. Pineda did not file a Petition for Rehearing with the Court of Appeal. This Petition for Review

is timely filed within 10 days of the Court of Appeal decision becoming final pursuant to California Rules of Court, Rule 8.500(e)(1).

C. The Court of Appeal Opinion

The Court of Appeal concluded that the trial court properly sustained Williams-Sonoma's demurrer to Pineda's claims for violations of Section 1747.08 and invasion of privacy based on allegations that Williams-Sonoma requested and recorded the customer's zip code for the purpose of using it and the customer's name to obtain the customer's home address through the use of a "reverse search" database. Opinion, p. 2.

In confirming the Trial Court's judgment, the Court of Appeal applied the following reasoning:

The Court of Appeal acknowledged that Section 1747.08 prohibits merchants that accept credit cards in transacting business from requesting and recording "personal identification information" concerning the cardholder. Opinion, pp. 1 and 4. The Court of Appeal further acknowledged that Section 1747.08 specifically defines "personal identification information" 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." Cal. Civ. Code § 1747.08(b). Opinion, p. 4.

The Fourth District Court of Appeal followed and extended its prior ruling in the Party City case, wherein the Party City Court concluded that a zip code is not "personal identification information" within the meaning of section 1747.08(b) because a zip code is not facially individualized information. Opinion, p. 5. The Court of Appeal found that the Party City Court "was well aware of the allegation that the defendant used the collected zip codes to locate individuals before it concluded, as a matter of law, that a zip code did not constitute 'personal identification information' within the meaning of the Act." Opinion, p. 6. The Court of Appeal

followed Party City in concluding that Section 1747.08 does not prohibit Williams-Sonoma from requesting and recording customers' zip codes during credit card transactions, despite that its sole purpose for collecting the zip codes is to use them to specifically identify its customers and obtain their home addresses for marketing. Id.

The Court of Appeal then conducted an analysis as to whether Pineda could state a claim for invasion of privacy based upon Williams-Sonoma's conduct. For the purposes of its analysis the Court of Appeal assumed that "individuals have a protected privacy interest and a reasonable expectation of privacy in their home addresses" and focused its attention on whether Pineda alleged sufficient facts showing a serious invasion of that privacy right. Opinion, p. 7.

The Court of Appeal found that, as a matter of law, Pineda did not allege facts showing a substantial impact on her privacy interests. Opinion, p. 8. The Court of Appeal found that because she had alleged no facts showing that her home address is not otherwise publicly available or what efforts she undertook to keep her home address private, that the disclosure of Pineda's address amounted to a trivial invasion of her assumed privacy interest. Opinion, pp. 8 and 9.

LEGAL DISCUSSION

A. The Plain Language Of Section 1747.08 Confirms That the Legislature Specifically Intended To Include Zip Codes In The Definition of Personal Identification Information

Section 1747.08's definition of "personal identification information" is clear and unambiguous. "Personal identification information" is specifically defined in Section 1747.08 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.” Cal. Civ. Code § 1747.08(b) (emphasis added). A cardholder’s particular zip code certainly “concerns” the cardholder. And zip codes are not written or otherwise set forth on credit cards. Because zip codes undoubtedly constitute “information concerning the cardholder” that is not set forth on the credit card, they fall squarely within the definition of “personal identification information” supplied in section 1747.08(b).² Instead of this straight forward express definition, the both Trial Court and the Court of Appeal applied a much more restrictive definition of “personal identification information.” Specifically, the Trial Court and Court of Appeal inserted an additional criteria into the definition by requiring that the information be “unique” to the cardholder, rather than merely “concerning” the cardholder as set forth in the express definition. Exhibit 11, pp. 386-389; Opinion, p. 5.

In its Opinion, the Court of Appeal relied on the Party City Court’s application of the canon of *ejusdem generis* wherein it stated that zip codes were not “unique” and were not “similar” to addresses or telephone numbers, because zip codes are not specific to an individual. Opinion, p. 5. These criteria are not found anywhere in Section 1747.08. Indeed, if the Legislature had wanted to use this standard, it would have expressly defined personal identification information to be “information that is unique to the cardholder, similar to an address or telephone number.” In

² Civil Code section 1747.08(d) further provides that retailers may request “reasonable forms of positive identification, which may include a driver’s license or a California state identification card...*provided that none of the information contained thereon is written or recorded...*” Cal. Civ. Code § 1747.08(d) (emphasis added). Zip codes are set forth on all California Driver’s Licenses, as well as on all California state identification cards. Subpart (d) specifically prohibits retailers from recording zip codes, which further evidences that the Legislature intended zip codes to fit within the definition of “personal identification information.”

any event, addresses and telephone numbers are more often than not unique to an individual as they are shared, albeit by family or group living arrangements.

B. The Opinion Improperly Strictly Construed The Act Which Should Be “Liberally Construed” To Further Its Remedial Purpose

The Court of Appeal’s strict construction of Section 1747.08 is contrary to (1) California case law finding that the Song-Beverly Credit Card Act in general, as well as the specific section at issue here, should be liberally construed, (2) controlling California precedent that remedial statutes are to be liberally construed, and (3) the California Supreme Court’s holding in People ex rel. Lungren v. Superior Court, (1996) 14 Cal.4th 294, 305, that the rule of strict construction of penal statutes applies to criminal not civil statutes.

First, the Court of Appeal followed the Party City Court in finding that “the definitions in the Act that give rise to exposure to this mandatory civil penalty should be strictly construed.” Party City Corp. v. Superior Court, 169 Cal.App.4th at 511. In doing so, the Court of Appeal necessarily had to ignore California law *directly on point* finding that the Song-Beverly Credit Card Act is “remedial in nature and in the public interest [and] is to be *liberally construed* to the end of fostering its objectives.” Young v. Bank of America, (1983) 141 Cal.App.3d 108, 114 (emphasis added). In construing *the identical section of the Credit Card Act that is at issue in this case*, the Florez Court surmised that: “Section 1747.8 is part of the Song-Beverly Credit Card Act, designed to promote consumer protection. The [A]ct imposes fair business practices for the protection for the protection of the consumers. Such a law is remedial in nature and in the public interest [and] is to be *liberally construed* to the end of fostering its objectives.” Florez, 108 Cal.App.4th at 450 (*citing Young*,

141 Cal.App.3d at 114) (emphasis added; internal quotes omitted). The Court of Appeal should have followed the same liberal construction principles and concluded that a zip code does constitute “personal identification information,” or “information concerning the cardholder” as defined in the statute. Especially considering that Williams-Sonoma is actually utilizing its customers’ zip codes to obtain their home addresses, which is specifically prohibited under the statute.

Second, in strictly construing this remedial Statute, the Court of Appeal also ignored controlling California precedent that remedial statutes are to be liberally construed. *See, e.g., People ex rel. Dep’t. of Transp. v. Muller*, (1984) 36 Cal.3d 263, 269 (“The rule of law in the construction of remedial statutes requires great liberality, and wherever the meaning is doubtful, it must be so construed as to extend the remedy.”) (*quoting Continental Cas. Co. v. Phoenix Constr. Co.*, (1956) 46 Cal.2d 423, 434-35). The “remedy” the Legislature was seeking when it enacted Section 1747.08 was to stop retailers from collecting unnecessary customer information during credit card transactions, including, but not limited to, home addresses and telephone numbers. By allowing Williams Sonoma to collect zip codes, which it quickly converts into home addresses, the Court of Appeal is not “extending the intended remedy.” It is destroying the intended remedy. “Moreover, the contrary rule requiring strict construction of statutes which impose new liability does not apply where strict construction would thwart ‘the palpable intent of the Legislature to impose a new liability consonant with new conditions.’” *Dep’t. of Transp.*, 36 Cal.3d at 269 (*quoting Peterson v. Grieger, Inc.*, (1961) 57 Cal.2d 43, 50-51 and *Continental Cas. Co.*, 46 Cal.2d at 434).

Finally, the Court of Appeal ignored the Supreme Court’s instruction as to the preferred construction of civil penal statutes. In *Lungren*, the Supreme Court was tasked with interpreting the Safe Drinking Water and

Toxic Enforcement Act which imposed a **mandatory** civil penalty “not to exceed” \$2,500 per day for violations of the Water Act. *See* Cal. Health & Safety Code §25249.7(b)(1). Defendants argued that the Act was “penal” and should be strictly construed. The Supreme Court found that argument “unconvincing” for two reasons. First, the Act was not “reasonably susceptible” to defendants’ interpretation “in light of the language and purpose of the Act.” The Court noted that the “rule of strict construction of penal statutes is not an inexorable command to override common sense and evident statutory purpose.” Lungren, 14 Cal.4th at 312 (citations omitted; internal quotations omitted). Second, the Court noted that “the rule of strict construction of penal statutes has generally been applied in this state to criminal statutes, ***rather than statutes which prescribe only civil monetary penalties***” because criminal penalties are “particularly serious and opprobrious” and “merit heightened due process.” Id. at 312-13 (emphasis added). Here, by contrast, the civil penalties are capped at \$1,000 per violation, but could be as little as a penny or the “proverbial peppercorn.” *See The TJX Companies, Inc. v. Superior Court*, (2008) 163 Cal.App.4th 80, 86-87. In Lungren, the Supreme Court found no authority that would “alter the general rule that civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose.” Lungren, 14 Cal.4th at 313.

Because the framework through which the Court of Appeal is interpreting Section 1747.08 was built on an improper legal standard, this Court’s review is necessary to apply the proper standard and resolve the conflict that currently exists between Divisions 1 and 3 of the Fourth District Court of Appeal.

C. The Legislative History Behind Section 1747.08 Confirms The Legislature Specifically Intended To Prohibit Retailers From Engaging In The Very Conduct At Issue In This Case

The Background Summary for AB 2920, which became California Civil Code section 1747.8 and was subsequently renumbered to Section 1747.08, articulates the problem to be addressed by the statute regarding retailers' collection of unnecessary personal information from consumers during credit card transactions. Under the heading "**The Problem**," the Legislature found that:

Consumers are led to mistakenly believe that such additional information is a necessary condition to complete the credit card transaction, when, in fact, it is not. Retailers acquire this additional personal information for their own business purposes – for example, to build a mailing list which they can subsequently use for their own in-house marketing efforts, or sell to direct mail specialists or to others.

(Exhibit 3, pp. 85, 135.)

This is exactly what Williams-Sonoma does. Williams-Sonoma preys on its credit card customers who are accustomed to providing their zip codes at gas stations during "pay at pump" transactions and mistakenly assume that Williams-Sonoma is requesting their zip codes to process their credit cards.³ But in reality, Williams-Sonoma's sole purpose for requesting zip codes is to use the information to covertly obtain its

³ Most gas stations require cardholders to provide their zip codes to verify the billing address tied to the credit card in an effort to prevent against credit card fraud during "pay at pump" transactions (this information is processed through the issuing bank and not actually shared with the gas stations). The conduct of gas stations in engaging in this practice does not violate Section 1748.08(a), as the conduct would fall under the exceptions set forth in Section 1747.08(c)(3), which will be more fully explained through expert testimony in the Trial Court if this matter is allowed to proceed.

customers' home addresses for its own business purposes, including to build a marketing database. It would defeat the express purpose of Section 1747.08 if retailers were prohibited from collecting customers' telephone number and address information directly, but allowed to covertly obtain this very information through the even more deceptive practice of collecting customers' zip codes under the guise of needing this information to process credit card transactions.

The Court of Appeal failed to consider what the Florez court found to be the Legislature's "obvious purpose" for enacting Section 1747.08 – to "prevent retailers from 'requesting' personal identification information and then **matching** it with the consumer's credit card number." Florez, 108 Cal.App.4th at 453 (emphasis added).⁴

Section 1747.08 must be interpreted to further the statute's purpose and can not be interpreted in a way that allows retailers to circumvent the statute. "Section [1747.08] is part of the Song-Beverly Credit Card Act, designed to promote consumer protection. The act 'imposes fair business practices for the protection of the consumers. Such a law is remedial in nature and in the public interest [and] is to be liberally construed to the end of fostering its objectives.'" Florez, 108 Cal.App.4th at 450 (*quoting* Young, 141 Cal.App.3d at 114).

If a retailer is allowed to collect zip codes during credit card transactions to obtain the cardholder's home address, then Section 1747.08 would be made void and meaningless. It is a Maxim of Jurisprudence that

⁴ See Florez, 108 Cal.App.4th at 451 ("This bill would prohibit requesting or requiring' personal information '[s]ince the card issuer already has that information, there is no need for the retailer to request it (some retailers request it for mailing list purposes).'" (*quoting* Enrolled Bill Report of the California Department of Consumer Affairs, Assembly Bill No. 1477 (1991-1991 Reg. Sess.)).

“[a]n interpretation which gives effect is preferred to one which makes void.” Cal. Civ. Code § 3541. “These canons [of judicial interpretation] generally preclude judicial construction that renders part of the statute ‘meaningless or inoperative.’” Hassan v. Mercy Amercian River Hospital, (2003) 31 Cal.4th 709, 715-16 (citing Manufacturers Life Ins. Co. v. Superior Court, (1995) 10 Cal.4th 257, 274).

D. The Court of Appeal Relied Almost Exclusively on Party City, Which was Determined By a Different Panel of Justices Based On Incomplete Evidence, False Assumptions, And Extremely Unique Facts

Based on the factual record and evidence submitted in Party City, that Court of Appeal concluded that a zip code was not unique to a person, but rather, only provides generalized group location identification. Party City Corp., 169 Cal.App.4th at 502. The Party City Court relied on the following facts: (i) “ZIP Code information is made available only to the company’s marketing department and ZIP Code data is transmitted there alone, without customer names or credit card numbers; and [(ii)] the company does not maintain a system or database that would allow it to locate a particular California customer’s address or telephone number utilizing only ZIP Code, name or credit card number.” Id. at 504.

However, Pineda specifically alleges that Williams-Sonoma is using “the zip code information obtained from the cardholder to acquire additional personal information, including the cardholder’s physical residential address by pairing the zip code with the cardholder’s name obtained from the credit card” and that “[s]uch conduct is performed intentionally and without the knowledge or consent of the cardholder.” (Exhibit 1, p. 3:15-18.)

The Party City Court also expressly recognized that the plaintiff in that case did not make any evidentiary showing that the present state of

technology allows for the use of a zip code to locate individuals. Party City, 169 Cal.App.4th at 505 fns. 5, 6. Based upon the absence of these facts, the Party City Court concluded:

A ZIP Code is not an address, but only a portion of it, and knowing a stand-alone ZIP Code has not been shown to be potentially more helpful in locating a specific person than knowing his or her state or county of residence. A ZIP Code is not an individualized set of identification criteria, such as telephone numbers would be, but rather ZIP Codes provide identification of a relatively large group, **on the present record**. Id. at 518 (emphasis added).

This case presents a much different record.

The Party City Court struggled with the idea that the record in that case proved, at most, a technical violation of the law requiring an expansive application of “information concerning a cardholder,” which the Court concluded it did not have to apply. The Court went to great lengths to point out the lack of evidence or even argument establishing that the defendant was using collected zip codes to obtain its customers’ home addresses, or that this was even possible. This case presents the opposite scenario. Williams-Sonoma wants to rely on a perceived loophole, created by Party City, to escape liability for its premeditated and systematic practice of obtaining its customers’ home addresses through trickery and deceit. Williams-Sonoma incredulously argues that zip codes are not “identification” information despite that its sole purpose for collecting zip codes is to specifically identify customers and obtain their home addresses. Section 1747.08’s express definition of “personal identification information” can not be so narrowly construed as to allow Williams-Sonoma to circumvent the statute. The Party City Court recognized that “statutory interpretation is not conducted in a vacuum, and the factual context of a particular dispute will give shape to the application of statutory construction principles.” Id. at 521. Because the factual context of this

case makes it clear that a zip code is not merely a group identifier, but rather serves to specifically identify the home address of an individual when combined with the name from the credit card, zip codes must fall within the definition of “personal identification information” as set forth in Section 1747.08(b).

As such, the Court of Appeal was wrong to blindly follow and extend the ruling in Party City because there was no evidence in that case showing that the defendant used the collected zip codes to obtain its’ customers’ home addresses. The Court of Appeal should have considered the specific allegations, and allowed Plaintiff the opportunity to prove her allegations in the Trial Court, which would have required the Court to reconsider the Party City decision.

E. Williams-Sonoma's Practice Of Collecting Zip Codes Under The Guise Of Needing Them To Process Credit Cards, And Then Surreptitiously Using Them Along With Customers' Names Captured From Their Credit Cards To Obtain Their Home Addresses Constitutes An Invasion Of Privacy

Pineda adequately pled in her Complaint the three elements for invasion of the constitutionally guaranteed right to privacy: (1) a legally protected privacy interest, (2) a reasonable expectation of privacy, and (3) a serious invasion. Hill v. National Collegiate Athletic Assn., (1994) 7 Cal.4th 1, 35-37. For the purposes of its analysis the Court of Appeal assumed, without deciding, that “individuals have a protected privacy interest and a reasonable expectation of privacy in their home addresses” and focused its attention on whether Pineda alleged sufficient acts showing a serious invasion of that privacy right. Opinion, p. 7. However, the Court of Appeal incorrectly found that because Pineda had alleged no facts showing that her home address is not otherwise publicly available or what efforts she undertook to keep her home address private, that the disclosure

of Pineda's address amounted to a trivial invasion of her assumed privacy interest. Opinion, pp. 8 and 9.

Whether or not Pineda's address was publically available is irrelevant. Pineda has alleged that Williams-Sonoma's deceitful conduct and subsequent receipt of Pineda's home address without her knowledge or consent, which intrusion was offensive and objectionable to Pineda.

(Exhibit 1, pp. 1-14.) The relevant question at the pleading stage is whether a jury could find that a person of ordinary sensibility would be offended to learn that Williams-Sonoma was not requesting her zip code to verify and process her credit card, but, rather, that Williams-Sonoma intended to use her name, and zip code to surreptitiously obtain her home address through sophisticated technology. Pineda submits that the answer to this question is resoundingly "yes." Williams-Sonoma's practice is highly offensive to ordinary people, and this is otherwise a question for the jury to decide.

Pineda alleges that Williams-Sonoma goes to great lengths and expense to obtain customers' home addresses utilizing their names, credit card numbers, and zip codes. *Id.* And that Williams-Sonoma realizes that customers' protect their privacy rights in their home addresses from retailers and others that want to solicit and market to them, and also from those that want to maintain their information in massive databases for sale to anyone willing to pay for it. *Id.* Williams-Sonoma's solution is to ask for seemingly innocuous information such as a zip code, which consumers are accustomed to providing at gas stations, and have no idea that the information can be used along with other information captured from their credit cards to obtain their home addresses. Even the United States Supreme Court instructs that "an individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *Id.* (*citing U.S. Dept. of Defense v. FLRA*, 510 U.S. 487, 501). "In

other words, the right to privacy is sufficiently strong to protect a decision not to disclose personal information to a specific audience.” Id. As a result, Pineda need not plead any facts regarding her attempts to maintain her information as “private” as such is not a requisite element to her privacy cause of action. *See Hill*, 7 Cal.4th at 35-37.

It is well-established that “individuals have a substantial interest in the privacy of their home.” Planned Parenthood v. Superior Court, (2000) 83 Cal.App.4th 347, 359; *see also Puerto v. Superior Court*, (2008) 158 Cal.App.4th 1242, 1252 (“current and former employees unquestionably have a legitimate expectation of privacy in their addresses and telephone numbers”); City of San Jose v. Superior Court, (1999) 74 Cal.App.4th 1008, 1019 (“individuals have a substantial privacy interest in their home addresses and in preventing unsolicited and unwanted mail”); Lorig v. Medical Board, (2000) 78 Cal.App.4th 462, 468. The California constitutional right of privacy prevents business interests from “collecting and stockpiling unnecessary information about us,” or “misusing information gathered for one purpose in order to serve other purposes.” Hill, 7 Cal.4th at 36 (citation omitted). Even the United States Supreme Court has expressed “reluctance to disparage the privacy of the home, which is accorded special consideration in our constitution, laws, and treaties.” Planned Parenthood, 83 Cal.App.4th at 366 (*quoting Dept. of Defense*, 510 U.S. at 501).

The potential risk to consumers’ safety resulting from access to the respective consumer’s home address was precisely the concern that prompted the California Legislature to enact Section 1747.08. The Legislature enacted Section 1747.08 in “response to two principle privacy concerns.” Florez, 108 Cal.App.4th at 452. One concern was that “with increased use of computer technology, very specific and personal information about a consumer’s spending habits was being made available

to anyone willing to pay for it.” Id. The second was that “acts of harassment and violence were being committed by store clerks who obtained customers’ phone numbers and addresses.” Id. The Legislature’s desire to protect consumers’ privacy rights in their home addresses is equally applicable regardless of whether the retailer collects addresses directly, or by reverse searching the addresses with its customers’ telephone numbers’ or zip codes, and regardless of whether zip codes constitute “personal identification information” for purposes of Section 1747.08.

Williams-Sonoma’s conduct amounts to a serious invasion of privacy, in that Williams-Sonoma is deceptively obtaining consumer’ home addresses, which also serve as the billing addresses for their credit cards, and then storing this information along with credit card information.

Identity theft is the fastest growing 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 fifty 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.

If the Opinion stands, retailers will be free to build their marketing databases with unsuspecting consumers who provide their zip codes believing they are necessary as a security measure to complete their credit card transactions. 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 credit card information, 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 and consent.

CONCLUSION

For the foregoing reasons, Plaintiff and Appellant Jessica Pineda respectfully requests this Court to Review the Court of Appeal's Opinion in this case.

DATED: November 24, 2009

Respectfully submitted,

LINDSAY & STONEBARGER, APC



GENE J. STONEBARGER
Attorney for Petitioner and
Plaintiff/Appellant, Jessica Pineda

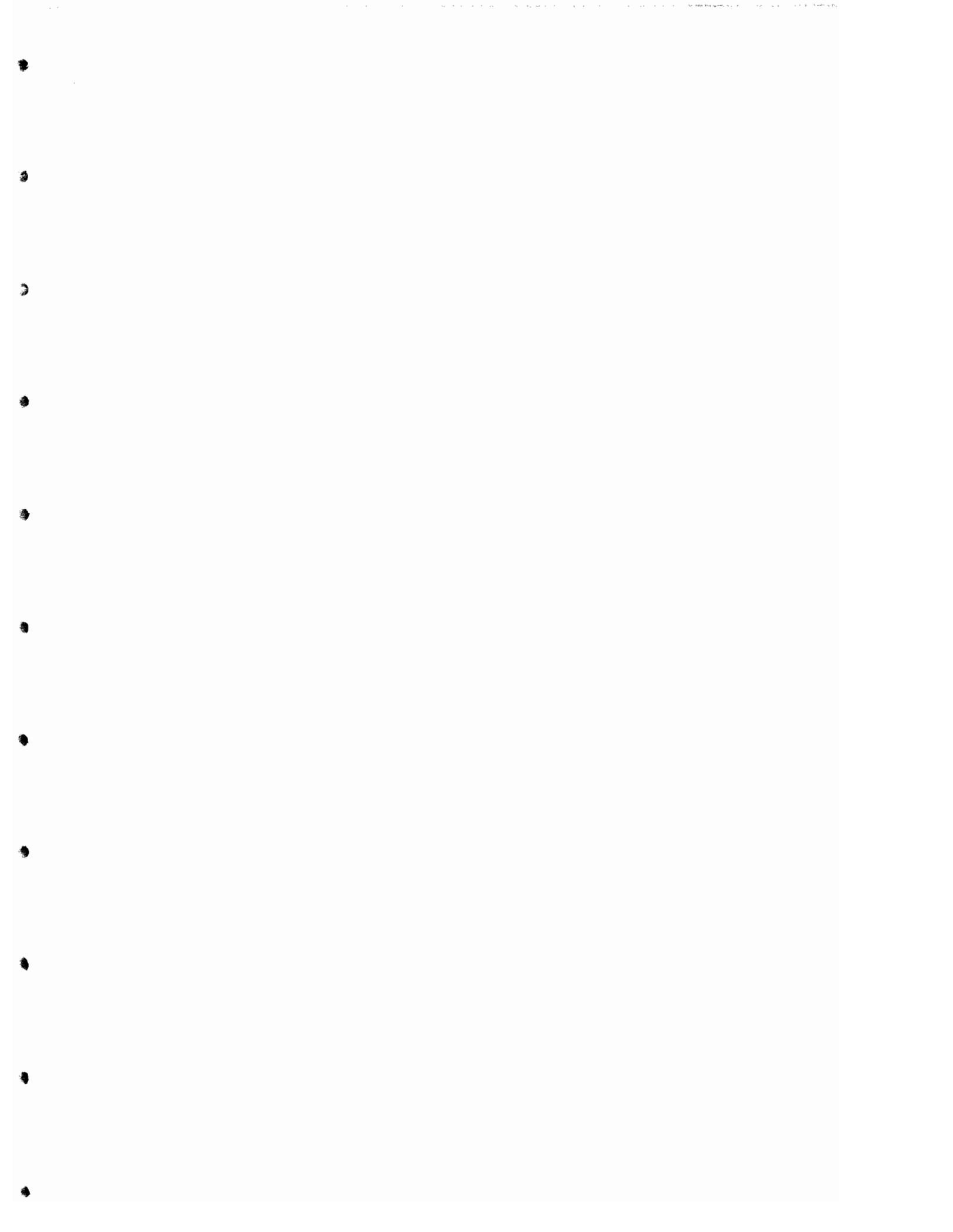
CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to rule 8.504(d)(1) of the California Rules of Court, the enclosed **PETITION FOR REVIEW** is produced using 13-point Times New Roman type, including footnotes, and contains approximately 6,337 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count provided by Microsoft Word word-processing software.

DATED: November 24, 2009



GENE J. STONEBARGER
Attorney for Petitioner and
Plaintiff/Appellant, Jessica Pineda



CERTIFIED FOR PUBLICATION
~~NOT TO BE PUBLISHED IN OFFICIAL REPORTS~~

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal Fourth District
FILED
OCT 08 2009
Stephen M. Kelly, Clerk

DEPUTY

JESSICA PINEDA,

Plaintiff and Appellant,

v.

WILLIAMS-SONOMA STORES, INC.,

Defendant and Respondent.

D054355

(Super. Ct. No. 37-2008-00086061- CU-BT-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald S. Prager, Judge. Affirmed.

California's Song-Beverly Credit Card Act of 1971 (Civ. Code, § 1747 et seq., hereafter the Act) prohibits merchants that accept credit cards in transacting business from requesting and recording "personal identification information" concerning the cardholder. (Civ. Code, § 1747.08, subd. (a)(2); all undesignated statutory references are to the Civil Code.)

In this case, we conclude that the trial court properly sustained a merchant's demurrer to a customer's claims for violation of the Act and invasion of privacy based on allegations

that the merchant requested and recorded the customer's zip code for the purpose of using it and the customer's name to obtain the customer's address through the use of a "reverse search" database. Accordingly, we affirm the judgment in the merchant's favor.

FACTUAL AND PROCEDURAL BACKGROUND

In accordance with the principles governing our review of a ruling sustaining a demurrer, the following factual recitation is taken from the allegations of the complaint.

(Moore v. Regents of University of California (1990) 51 Cal.3d 120, 125.)

Jessica Pineda visited a store in California owned by Williams-Sonoma Stores, Inc. (the Store) and selected an item to purchase. She then went to the cashier to pay for the item with her credit card. The cashier asked for her zip code, but did not tell her the consequences if she declined to provide the information. Believing that she was required to provide her zip code to complete the transaction, Pineda provided the information. The cashier recorded it into the electronic cash register and then completed the transaction. At the end of the transaction, the Store had Pineda's credit card number, name and zip code recorded in its databases.

After acquiring this information, the Store used customized computer software to perform reverse searches from databases that contain millions of names, e-mail addresses, residential telephone numbers and residential addresses, and are indexed in a manner that resembles a reverse telephone book. The Store's software then matched Pineda's now-known name, zip code or other personal information with her previously unknown address, thereby giving the Store access to her name and address. The Store then maintains all this information in a database.

Pineda filed this matter as a putative class action. She alleged that the Store's conduct violated the Act and Business and Professions Code section 17200 et seq. She also claimed that the Store invaded her privacy by: requesting and recording her zip code; using this information, without her knowledge, to obtain her address; and viewing, printing, distributing and using her address for its own profit.

The Store demurred to the complaint on the following grounds: (1) the claim for violation of the Act failed because a zip code is not "personal identification information" under the Act; (2) Pineda lacked standing to sue for a violation of Business and Professions Code section 17200; and (3) her claim for invasion of privacy failed because (a) she did not allege any public disclosure, (b) it was uncertain, and (c) she did not allege all necessary elements.

After Pineda conceded the demurrer to her claim for violation of Business and Professions Code section 17200, the trial court sustained the demurrer to the remaining causes of action without leave to amend. The trial court concluded that a zip code did not fall within the definition of "personal identification information." (§ 1747.08, subd. (b).) It also concluded that Pineda's claim for invasion of privacy failed because she did not show she had a reasonable expectation of privacy in her zip code or home address, what steps she took to keep this information private, or how marketing to her caused unjustified embarrassment or indignity.

Pineda timely appealed. We declined Pineda's subsequent request to dismiss the appeal because it involved a matter of continuing public interest based on numerous similar actions filed statewide.

DISCUSSION

I. *Standard of Review*

We review an order sustaining a demurrer without leave to amend de novo (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318), assuming the truth of all properly pleaded facts as well as facts inferred from the pleadings, and give the complaint a reasonable interpretation by reading it as a whole and its parts in context. (*Palacin v. Allstate Ins. Co.* (2004) 119 Cal.App.4th 855, 861.) However, we give no credit to allegations that merely set forth contentions or legal conclusions. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 768-769.) A complaint will be construed "liberally . . . with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) If the complaint states a cause of action on any possible legal theory, we must reverse the trial court's order sustaining the demurrer. (*Palestini v. General Dynamics Corp.* (2002) 99 Cal.App.4th 80, 86.) Whether a plaintiff will be able to prove its allegations is not relevant. (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.)

II. *Analysis*

A. Violation of the Act

The Act prohibits merchants that accept credit cards in transacting business from making requests that the cardholder provide "personal identification information" and from recording that information. (§ 1747.08, subd. (a)(2).) "[P]ersonal identification information,' means 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." (§ 1747.08, subd. (b).)

In *Party City Corp. v. Superior Court* (2008) 169 Cal.App.4th 497 (*Party City*), another panel of this court considered the language of the Act and the legislative history arguments presented by the parties. It concluded, as a matter of law, that a zip code is not "personal identification information" within the meaning of section 1747.08, subdivision (b) because a zip code is not facially individualized information. (*Id.* at pp. 506, 518.)

Specifically, the *Party City* court noted that "[i]f the Legislature intended 'personal identification information' to include all components of an address, not just specific ones, it would not have specified in subdivision (b) that the protected information (address and telephone number) is of the kind that pertains to individuals, not groups of zip code inhabitants. The canon of *ejusdem generis* supports a construction of the phrase in section 1747.08, subdivision (b), 'personal identification information,' or 'information concerning the cardholder, other than information set forth on the credit card,' as meaning that the enumerated items (address and telephone number) were intended to be specific in nature regarding an individual, rather than a group identifier such as a zip code. If the Legislature had intended 'address' to be used in its unrestricted sense, it would not also have mentioned a specific item such as a telephone number in this context. [Citation.]" (*Party City, supra*, 169 Cal.App.4th at p. 520.)

Pineda argues that *Party City* is distinguishable because there was no evidence in that case showing that the defendant used the collected zip codes to obtain its customers' addresses. She claims that the different factual context takes the instant case outside the *Party City* holding. The Store asserts that *Party City* is controlling. We agree with the Store.

In *Party City*, the plaintiff alleged, among other things, that the defendant used the zip codes it obtained to further its own business purposes through target marketing its products to consumers with a known interest in those products and that the collection of this information exposed customers to potential credit card fraud and identity theft. (*Party City, supra*, 169 Cal.App.4th at p. 503.) The defendant moved for summary judgment on the ground a zip code is not "personal identification information" as a matter of law and, alternatively, that the plaintiff could not show that the cashier required a zip code as a condition to accepting a credit card payment. (*Ibid.*) The plaintiff argued why a zip code constituted "personal identification information" as defined by the Act. The plaintiff also attempted to support her allegations by presenting evidence that online searches could be conducted to locate individuals using a zip code. (*Id.* at pp. 504-505, fn. 5.) Accordingly, the *Party City* court was well aware of the allegation that the defendant used the collected zip codes to locate individuals before it concluded, as a matter of law, that a zip code did not constitute "personal identification information" within the meaning of the Act.

Simply put, the Act either allows a retailer to ask customers for a zip code or it prohibits this conduct. The *Party City* court concluded, and we agree, that the Act does not prohibit this conduct. Although Pineda asserts a zip code *should* be covered by the Act because existing technology allows any company or person to locate an individual based on the individual's name and zip code, this argument is best presented to the Legislature.

B. Invasion of Privacy

Pineda contends that her privacy claim is not dependent upon a finding that a zip code constitutes "personal identification information" within the meaning of the Act; rather, she

asserts that her claim is based on the Store's alleged use of her name, credit card number and zip code to obtain her home address without her consent. The Store contends Pineda is improperly arguing a new theory on appeal, i.e., that the initial request for the zip code need not be wrongful or illegal. The question on demurrer, however, is whether the complaint states a cause of action "under any possible legal theory." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810.) With this principle in mind, we review whether Pineda has sufficiently alleged the necessary elements to state a valid claim for invasion of privacy.

To establish a claim for invasion of privacy under the California Constitution, a plaintiff must show: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy; and (3) a serious invasion of that right. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40 (*Hill*.) The three "threshold elements" set out in *Hill* allow courts to weed out claims that involve insignificant or de minimis intrusions not requiring explanation or justification. (*Loder v. City of Glendale* (1997) 14 Cal.4th 846, 893.) Whether a legally protected privacy interest exists is a question of law. (*Hill, supra*, at p. 40.) The second and third elements of the privacy claim involve mixed questions of law and fact. (*Ibid.*) However, "[i]f the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests, the question of invasion may be adjudicated as a matter of law." (*Ibid.*)

Pineda argues that individuals have a protected privacy interest and a reasonable expectation of privacy in their home addresses. For purposes of our analysis we will assume, without deciding, that Pineda adequately alleged these elements and focus our attention on whether she alleged sufficient facts showing a serious invasion of that privacy right.

To be actionable, invasions of privacy "must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right." (*Hill, supra*, 7 Cal.4th at p. 37.) As a matter of law, Pineda has not alleged facts showing a substantial impact on her privacy interests. Pineda alleges that she suffered from an offensive intrusion to her privacy when the Store obtained her address, then viewed, printed, distributed and used the address for its own profit. Pineda, however, alleged no facts showing that her home address is not otherwise publicly available or what efforts she undertook to keep her home address private. Without such facts, using a legally obtained zip code to acquire, view, print, distribute or use an address that is otherwise publicly available does not amount to an offensive intrusion of her privacy.

Although Pineda argues that she adequately alleged that the Store sold her home address to third parties for profit, this allegation is not in the complaint. Even assuming Pineda had made such an allegation, we fail to see how selling an address that is otherwise publicly available amounts to "an egregious breach of the social norms underlying the privacy right." (*Hill, supra*, 7 Cal.4th at p. 37; compare, *Jeffrey H. v. Imai, Tadlock & Keeney* (2000) 85 Cal.App.4th 345, 355 [law firm's disclosure of the irrelevant HIV status of a litigant in an automobile accident case sufficient to allege egregious conduct invading privacy], disapproved of on other grounds in *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 962; *Egan v. Schmock* (N.D.Cal. 2000) 93 F.Supp.2d 1090, 1095 [stalking and filming of neighbors in their home sufficient to allege invasion of privacy].)

Additionally, "the extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy." (*Hill, supra*, 7 Cal.4th at p. 37.) Although

Pineda seeks damages for the alleged invasion of her privacy, the complaint contains absolutely no facts showing the extent and gravity of the alleged invasion of privacy. Under the facts alleged, the disclosure of Pineda's address amounted to a trivial invasion of her assumed privacy interest.

DISPOSITION

The judgment is affirmed. The respondent is entitled to recover its costs on appeal.

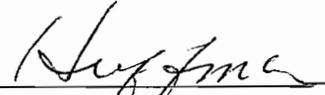


McINTYRE, J.

WE CONCUR:



BENKE, Acting P. J.



HUFFMAN, J.

CERTIFIED FOR PUBLICATION
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

Court of Appeal Fourth District
FILED
OCT 23 2009
Stephen M. Kelly, Clerk
DEPUTY

JESSICA PINEDA,

Plaintiff and Appellant,

v.

WILLIAMS-SONOMA STORES, INC.,

Defendant and Respondent.

D054355

(Super. Ct. No. 37-2008-00086061- CU-
BT-CTL)

ORDER CERTIFYING OPINION
FOR PUBLICATION

THE COURT:

The opinion filed October 8, 2009 is ordered certified for publication.

The attorneys of record are:

Lindsay & Stonebarger, Gene J. Stonebarger, James M. Lindsay, Richard D.
Lambert, Harrison Patterson O'Connor & Kinkead, James R. Patterson, Harry W.
Harrison and Cary A. Kinkead for Plaintiff and Appellant.

Atkins & Davidson, Todd C. Atkins and Clark L. Davidson for The Consumer
Federation of California and The Privacy Rights Clearinghouse as Amicus Curiae on
behalf of Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, P. Craig Cardon and Elizabeth S. Berman
for Defendant and Respondent.



BENKE, Acting P. J.

Copies to: All parties

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal Fourth District
FILED

OCT 30 2009

Stephen M. Kelly, Clerk
DEPUTY

JESSICA PINEDA,

Plaintiff and Appellant,

v.

WILLIAMS-SONOMA STORES, INC.,

Defendant and Respondent.

D054355

(Super. Ct. No. 37-2008-00086061- CU-
BT-CTL)

MODIFICATION ORDER

NO CHANGE IN JUDGMENT

THE COURT:

The opinion filed October 8, 2009 is modified as follows:

Please add the following to the attorneys of record:

Cooley Godward Kronish, Michelle C. Doolin, Lori R.E. Ploeger and Leo P.

Norton for Old Navy, as Amicus Curiae on behalf of Defendant and Respondent.

NO CHANGE IN JUDGMENT



BENKE, Acting P. J.

Copies to: All parties

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the County of Sacramento, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 620 Coolidge Drive, Suite 225, Folsom, California 95630.

2. That on November 24, 2009, declarant served the PETITION FOR REVIEW on the interested parties listed below by placing a true copy thereof in a sealed Federal Express envelope with postage thereon fully prepaid:

Court of Appeal, Fourth District, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, California 92101
1 Copy

Honorable Ronald S. Prager
San Diego Superior Court
Central Division
Department 71
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***Attorneys for Defendant and Respondent,
Williams-Sonoma Stores, Inc.***

1 Copy

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 24, 2009, at Folsom, California.



Gene J. Stonebarger

