

SUPREME COURT COP

No. S178241

IN THE
SUPREME COURT OF CALIFORNIA

JESSICA PINEDA,
Plaintiff and Appellant,

v.

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

SUPREME COURT
FILED

MAY 3 - 2010

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

APPELLANT'S OBJECTION TO RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

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CLERK SUPREME COURT

Attorneys for Plaintiff and Appellant Jessica Pineda

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APPELLANT'S OBJECTION TO RESPONDENT'S
REQUEST FOR JUDICIAL NOTICE

In support of its Answer Brief, Respondent Williams-Sonoma Stores, Inc. requests this Court to take judicial notice of eight (8) specific documents. However, seven (7) of these documents - those relating to the responses received by Williams-Sonoma from various public law enforcement agencies from around the State - are not the proper subject of judicial notice under either California Evidence Code Sections 451 or 452. Tellingly, Williams-Sonoma fails to provide any authority to support its request, other than its unsupported contention as to the purported relevancy of these documents - which, as will be explained below, is strenuously

disputed by Pineda. Thus, the Court must deny Williams-Sonoma's Request for Judicial Notice as it relates to Exhibits 2-8.

On appeal, in considering whether to grant a party's request for judicial notice, a reviewing court is bound by the provisions of California Evidence Code section 459(a) which states:

The reviewing court shall take judicial notice of (1) each matter properly noticed by the trial court and (2) each matter that the trial court was required to notice under Section 451 or 453. The reviewing court may take judicial notice of any matter specified in Section 452. The reviewing court may take judicial notice of a matter in a tenor different from that noticed by the trial court.

Here, Exhibits 2-8 to Williams-Sonoma's Request for Judicial Notice were not presented to the Trial Court rendering sections (1) and (2) of Evidence Code section 459(a) inapplicable. Consequently, this Court may take permissive judicial notice of Exhibits 2-8, but only if the Court determines that the exhibits satisfy California Evidence Code section 452 - which they do not.

Under California Evidence Code section 452, the Court may take judicial notice of the following:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Clearly, none of the aforementioned categories in section 452 apply to Exhibits 2-8. Williams-Sonoma cannot, nor has it even attempted to, show that the purported facts contained in Exhibits 2-8 - that the absence of public agency enforcement of Section 1747.08 based on a retailer's collection of zip codes proves that such conduct is not in violation of the statute - are either facts or propositions "not reasonably subject to dispute"

and “capable of immediate and accurate determination by the court” as required. Rather, Williams-Sonoma's Request for Judicial Notice is based entirely on speculation and conjecture as to the meaning of Exhibits 2-8. Yet neither theories nor hypotheses are the proper subject of judicial notice.

Nevertheless, Williams-Sonoma asks this Court to simply infer that because these public enforcement agencies have not pursued violations of Section 1747.08 for retailers' collections of zip codes, that the only plausible reason must be that these agencies do not interpret Section 1747.08 in the same manner as Pineda. In doing so, Williams-Sonoma simply requests this Court to accept its conjecture as fact and ignore any potential explanations that undermine its theory. For example, couldn't these absence of public enforcement of Section 1747.08 be because these agencies have found that private enforcement of Section 1747.08 has been adequate to ensure compliance with the statute?

In sum, Williams-Sonoma is requesting this Court to take judicial notice of an absence of facts and interpret such absence to be an affirmative statement. An inference (and a weak one at that) is not a fact, and an inference is certainly not the proper subject of judicial notice; thus, Williams-Sonoma's Request for Judicial Notice of Exhibits 2-8 must be denied.

DATED: May 2, 2010

Respectfully submitted,
STONEBARGER LAW, APC

By: 
Gene J. Stonebarger
Richard D. Lambert
Attorneys for Plaintiff and Appellant

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 75 Iron Point Circle, Suite 145, Folsom, California 95630.

2. That on May 3, 2010 declarant served the **APPELLANT'S OBJECTION TO RESPONDENT'S REQUEST FOR JUDICIAL NOTICE** on the interested parties listed below by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid:

Via Hand Delivery
Original and 13 copies:

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Via Federal Express
One (1) copy to each of the following:

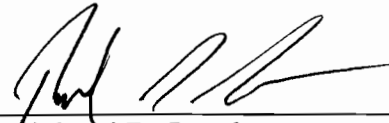
Court of Appeal, Fourth District, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, CA 92101

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 3, 2010, at Folsom, California.



Richard D. Lambert

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