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## Legal Updates & News

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#### California Court Allows Retailers to Collect Zip Code Data

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Who would have thought zip codes could cause so much of a fuss? Retailers and restaurants know, because scores of them have been sued in class actions throughout California on the dubious theory that recording a customer's zip code at the point-of-sale violates California law. On December 19, 2008, the California Court of Appeal said no.<sup>[1]</sup> The ruling in *Party City Corp. v. Superior Court* may doom all of those cases.

#### Background

In the past year, plaintiff's lawyers have filed class action suits against over 40 retailers, alleging that requests for zip code information during credit card transactions violated California law. The plaintiffs' claimed such requests violated the Song-Beverly Credit Card Act of 1971<sup>[2]</sup> (the "Act") because zip codes constitute "personal identification information," which merchants cannot demand as a condition of engaging in a credit card transaction. Under the Act, a retailer that accepts credit cards may not "request, or require as a condition to accepting the credit card as payment . . . , the cardholder to provide personal identification information."<sup>[3]</sup> The Act 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."<sup>[4]</sup>

#### Summary of the Court of Appeal's Decision

In *Party City Corp.*, decided December 19, 2008, the plaintiff alleged that the defendant violated the Act by requesting the plaintiff's zip code as part of a credit card transaction. The plaintiff asserted her individual claim and claims on behalf of a class of credit card customers of the retailer. The plaintiff sought damages under the Act of up to \$250 for the first violation, and \$1,000 for each subsequent violation.

In response to the claim, the defendant filed a motion for summary judgment, arguing in part that, as a matter of law, a zip code was not "personal identification information." The trial court disagreed, and, in denying the motion, ruled that "the language of [the Act] is clear and unambiguous and the cardholder's zip code falls within its definition of 'personal identification information.'"

The defendant then filed a petition for writ of mandate with the California Court of Appeal regarding the trial court's rejection of its summary judgment motion. In granting the petition, the Court of Appeal held the trial court "erroneously interpreted the definitional portions" of the Act, and found defendant was entitled to summary judgment. In reaching its decision, the Court of Appeal looked to federal regulations for the common meaning and definition of zip codes, and determined "[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. . ." The Court of Appeal also determined the purpose of the Act was to protect the private, personal information of individuals, and therefore group information, like zip codes, was not intended to be covered. The Court concluded that zip codes do not fall within the Act's protected category of "personal identification information."

## Conclusion

The Court of Appeal's decision removes a great deal of uncertainty surrounding the lawful business practice of requesting a customer's zip code at the point of sale. Given the number of cases already on file, however, we expect that the plaintiff in this action will seek review by the California Supreme Court. Until that court rejects review or decides that matter, retailers collecting zip code information still face some litigation risk, albeit at a much reduced level.

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## Footnotes

[1] *Party City Corp. v. Superior Court*, No. D053530 (Cal. Ct. App. filed Dec. 19, 2008).

[2] California Civil Code section 1747 *et seq.*

[3] *Id.* at 1747.08(a)(2).

[4] *Id.* at 1747.08(b).