

**S178241**

**In the Supreme Court**

OF THE

**State of California**

\_\_\_\_\_  
JESSICA PINEDA  
*Plaintiff, Appellant and Petitioner,*

v.

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

**SUPREME COURT  
FILED**

AFTER DECISION BY THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA,  
FOURTH APPELLATE DISTRICT, DIVISION ONE  
Appeal No. D054355

APR 12 2010

Frederick K. Ohlrich Clerk

Deputy

\_\_\_\_\_  
ON APPEAL FROM THE SUPERIOR COURT OF THE COUNTY OF SAN DIEGO  
HONORABLE JUDGE RONALD S. PRAGER  
Case No. 37-2008-00086061-CU-BT-CTL

**RESPONDENT WILLIAMS-SONOMA STORES, INC.'S  
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
ANSWER BRIEF ON THE MERITS  
AND [PROPOSED] ORDER THEREON**

\_\_\_\_\_  
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
P. CRAIG CARDON, CAL. BAR No. 168646  
ELIZABETH S. BERMAN, CAL. BAR No. 252377  
1901 AVENUE OF THE STARS, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067  
TEL: (310) 228-3700  
CCARDON@SHEPPARDMULLIN.COM  
EBERMAN@SHEPPARDMULLIN.COM

*Attorneys for Defendant and Respondent, WILLIAMS-SONOMA STORES, INC.*

TO THIS HONORABLE COURT, PETITIONER AND HER  
ATTORNEYS OF RECORD:

Respondent WILLIAMS-SONOMA STORES, INC.

("Williams-Sonoma") respectfully requests that this Court take judicial notice of the following pursuant to California Evidence Code §459, CALIFORNIA RULES OF COURT Rules 8.520(g) and 8.252(a), and other applicable authority:

1. The Enrolled Bill Report included in the legislative history of California Civil Code Section 1747.08(d), as added by Statutes of 1991, Chapter 1089, § 2 (AB 1477), a true and correct copy of which is attached as **Exhibit 1** hereto. *Casella v. Southwest Dealer Services* (2007) 157 Cal.App.4th 1127, 1137 (holding the legislative history of a statute is the proper subject of judicial notice).

Williams-Sonoma further requests that this Court take judicial notice of the following public records (Cal. Evid. Code § 452(c)):

2. Williams-Sonoma's public records request and the California Attorney General's response, true and correct copies of which are attached as **Exhibit 2** hereto.

3. Williams-Sonoma's public records request and follow up letter to the San Diego County District Attorney, true and correct copies of which are attached as **Exhibit 3** hereto, to which Williams-Sonoma received no written response.

4. Williams-Sonoma's public records request and the San Diego City Attorney's response, true and correct copies of which are attached as **Exhibit 4** hereto.

5. Williams-Sonoma's public records request and the Los Angeles County District Attorney's response, true and correct copies of which are attached as **Exhibit 5** hereto.

6. Williams-Sonoma's public records request and the Los Angeles City Attorney's response, true and correct copies of which are attached as **Exhibit 6** hereto.

7. Williams-Sonoma's public records request and the San Francisco County District Attorney's response, true and correct copies of which are attached as **Exhibit 7** hereto.

8. Williams-Sonoma's public records request and follow up letter, and the San Francisco City Attorney's response, true and correct copies of which are attached as **Exhibit 8** hereto.

The Enrolled Bill Report from the legislative history of California Civil Code 1747.08(d) (Exhibit 1) is relevant to the appeal because it refutes Petitioner's arguments regarding subsection (d)'s role in interpreting subsections (a) and (b) by establishing that the addition of subsection (d) in an amendment a year after the enactment of subsections (a)-(c) was a non-substantive clarification which added no rights or remedies. Exhibits 2 through 8 are relevant to the appeal because they tend

to show that these government agencies, which are charged with enforcing Song-Beverly, have not interpreted Song-Beverly in the way that Petitioner advocates, demonstrating the improbability that her interpretation is consistent with the Legislature's intent. Cal. R. Ct. 8.252(a)(2)(A).

These matters were not presented to the trial court. Cal. R. Ct. 8.252(a)(2)(B).

These matters do not relate to proceedings occurring after the judgment that is the subject of the appeal. Ca. R. Ct. 8.252(a)(2)(C).

Respectfully submitted,

Dated: April 8, 2010

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



P. CRAIG CARDON

ELIZABETH S. BERMAN

Attorneys for Respondent

WILLIAMS-SONOMA STORES, INC.

**[PROPOSED] ORDER**

Good cause appearing thereon, the Court hereby GRANTS Williams-Sonoma's Request for Judicial Notice in Support of Answer Brief on the Merits, and takes Judicial Notice of Exhibits 1 through 8 thereto.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Justice of the Supreme Court of California



ENROLLED BILL REPORT

Analyst: Gale Baker  
 Bus. Ph: 323-0399  
 Home Ph: 933-6314

AGENCY: State and Consumer Services Agency	BILL NUMBER: AB 1477
DEPARTMENT: Department of Consumer Affairs	AUTHOR: Areias

BILL SUMMARY

This bill would make several cleanup changes to Assemblyman Areias' AB 2880 (Ch. 637) and AB 2920 (Ch. 999) of last year. The changes are described in Specific Findings.

BACKGROUND

This bill is a cleanup of AB 2880 (Ch. 637, Stats. 1990) and AB 2920 (Ch. 999, Stats. 1990). The department and the author's office have received numerous requests for clarification on the two bills.

AB 2880 prohibits requiring consumers to show a credit card when making a purchase by check, with certain exceptions.

AB 2920 generally prohibits requiring consumers to provide personal information like a phone number or address when making a purchase by credit card.

SPECIFIC FINDINGS

I. Cleanup Amendments to AB 2880

Existing law prohibits persons accepting checks as payment for goods or services from, among other things, requiring the person to provide a credit card as a condition of accepting the check. However, the law permits "requesting" a credit card as an indication of creditworthiness or financial responsibility or as identification, if the only information recorded is the type of credit card, the issuer, "or" the expiration date.

This bill would further clarify that retailers may request, but not require, a credit card, if all that is recorded is the type of card, the issuer "and" the expiration date. These are clarifying, nonsubstantive changes that reflect the way the bill was to be interpreted. Replacing "or" with "and" clarifies that retailers may record all three of these items of information, rather than just one of them.

VOTE:	<u>Assembly Partisan</u>		<u>Senate Partisan</u>		
		R	D	R	D
	Floor:	73-0		Floor:	37-0
	Policy Committee:	13-0		Policy Committee:	8-0
	Fiscal Committee:			Fiscal Committee:	

RECOMMENDATION TO GOVERNOR:

SIGN  VETO  NO POSITION  DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: <i>Clare D. Bell</i>	DATE: <i>5/16/91</i>	AGENCY SECRETARY: <i>Ganne Moore</i>	DATE: <i>9/9/91</i>
--	-------------------------	---	------------------------

This bill also would limit these restrictions to sales or leases of goods or services at retail. This is also a clarifying, nonsubstantive change; AB 2880 was intended to apply only to retail (consumer) transactions, not wholesale (commercial) transactions.

In addition, the bill would require retailers requesting a credit card to inform customers that they do not have to display a credit card by either posting a sign or verbally informing check-writing customers. The sign's language ("Check writing ID: credit card may be requested but not required for purchases") was drafted by the California Retailers Association, with the consent of the California Grocers Association.

Existing law exempts check guarantee cards, among other things, from the above restrictions. Existing law does not define "check guarantee card."

This bill would define "check guarantee card" and would also exempt cards that act as both a credit card and a check guarantee card.

Existing law generally prohibits requiring a credit card or writing down a credit card number as a condition of accepting a check used to pay "in full or in part for goods or services." Thus, the existing law does not prohibit requesting a credit card or writing down a credit card number if the consumer is cashing the check "for cash."

This bill would specifically authorize merchants to request a credit card and write down the number if the customer is just receiving "cash back" and is not buying anything.

Existing law does not prohibit requiring reasonable identification, other than a credit card, such as a driver's license or a California state ID card, as a condition of accepting a check.

This bill would explicitly permit requiring, verifying and recording the purchaser's name, address and telephone number. It would also permit requesting or recording a credit card number on a check used to make a payment on that credit card account. It often happens that when making payment on a credit card account in person (e.g., at a department store or bank), the credit card number is recorded on the check to ensure it gets properly credited.

## II. Cleanup Amendments to AB 2920

Existing law prohibits requiring and then recording personal information (e.g., phone number and/or address) on a credit card holder as a condition of accepting a credit card. The existing law could be interpreted as permitting retailers to "request" but not "require" this information.

This bill would prohibit requesting or requiring that information. Since 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).

Existing law exempts from the above restriction (1) cash advance transactions, (2) personal information that the person accepting the credit card is contractually obligated to provide to the credit card issuer to complete the transaction, and (3) personal information that is required for a special purpose incidental to the transaction, such as for shipping, servicing, delivery or installation of the goods or for special orders.

This bill would in addition exempt transactions where the credit card is used as a deposit to secure payment in the event of default, loss, damage or other similar occurrence. The card holder's address and phone number are necessary when using a credit card to guarantee hotel reservations, renting a car, and similar transactions.

The bill also would specifically authorize the person accepting the card to require reasonable ID, including a driver's license or a California state ID card. This is a clarifying, nonsubstantive change; AB 2920 was never intended to prohibit asking for a driver's license or similar ID.

This bill is an urgency measure.

Fiscal Impact

None.

Proponents: Author (sponsor)  
American Express  
BankCard Holders of America  
California Bankers Association  
California Retailers Association  
CalPIRG  
Consumer Action  
Consumers Union  
Department of Consumer Affairs

Opponents: None known

The purpose of this bill is to clarify Assemblyman Areias' AB 2880 and AB 2920 of last year. There is no known opposition.

RECOMMENDATION

SIGN. This is a good cleanup bill.







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310-228-3700 office | 310-228-3701 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Writer's Direct Line: 310-228-3731  
[eberman@sheppardmullin.com](mailto:eberman@sheppardmullin.com)

Our File Number: 04DG-139154

February 25, 2010

**VIA ELECTRONIC MAIL ONLY**

Public Records Ombudsman  
P.O. Box 944255-2550  
Sacramento, CA 95814  
E-Mail: [PublicRecords@doj.ca.gov](mailto:PublicRecords@doj.ca.gov)

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by California Attorney General

Dear Public Records Ombudsman:

We make the following request pursuant to the California Public Records Act of 2004, Government Code §§ 6250 *et seq.*, and the California Constitution, Art. I, § 3(b).

The Song-Beverly Credit Card Act of 1970, California Civil Code § 1747.08 ("Song-Beverly"), provides that the "Attorney General . . . may bring an action in the superior court in the name of the people of the State of California to enjoin violation" of Song-Beverly. Cal. Civ. Code § 1747.08(f). **Accordingly, Williams-Sonoma requests copies of all records maintained by the California Attorney General's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information.**

Please do not hesitate to contact me directly should you require further clarification of this request.

Very truly yours,

/s/

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:1ESB1\402490931.1

cc: P. Craig Cardon, Esq.

**EDMUND G. BROWN JR.**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



300 SOUTH SPRING STREET, SUITE 1702  
LOS ANGELES, CA 90013

Public: (213) 897-2000  
Telephone: (213) 897-6027  
Facsimile: (213) 897-4951  
E-Mail: Michele.VanGeldereren@doj.ca.gov

March 1, 2010

Via Electronic Mail  
eberman@sheppardmullin.com

Elizabeth S. Berman  
Sheppard Mullin Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017

RE: Your Public Records Act Request re Enforcement of Civil Code Section 1747.08

Dear Ms. Berman:

This letter is in response to your correspondence dated February 25, 2010 in which you sought records pursuant to the Public Records Act, Government Code section 6250 et seq., and the California Constitution, Article I, Section 3(b).

Specifically, you requested "copies of all records maintained by the California Attorney General's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information."

We have no public records that meet your request. Please call me at (213) 897-6027 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Michele R VanGeldereren".

MICHELE VAN GELDEREN  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

MVG:





Suite 1600 | 1901 Avenue of the Stars | Los Angeles, CA 90067-6017  
310-228-3700 office | 310-228-3701 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Writer's Direct Line: 310-228-3731  
eberman@sheppardmullin.com

Our File Number: 04DG-139154

February 26, 2010

**VIA ELECTRONIC & U.S. MAIL**

San Diego County District Attorney's Office  
Hall of Justice  
330 W. Broadway  
San Diego, CA 92101  
E-Mail: [publicaffairs@sdcca.org](mailto:publicaffairs@sdcca.org)

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by San Diego County District Attorney

To Whom It May Concern:

We make the following request pursuant to the California Public Records Act of 2004, Government Code §§ 6250 *et seq.*, and the California Constitution, Art. I, § 3(b).

The Song-Beverly Credit Card Act of 1970, California Civil Code § 1747.08 ("Song-Beverly"), provides that the "Attorney General, or any district attorney or city attorney within his or her respective jurisdiction . . . may bring an action in the superior court in the name of the people of the State of California to enjoin violation" of the statute. Civ. Code § 1747.08(f). **Accordingly, Williams-Sonoma requests copies of all records maintained by the San Diego County District Attorney's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information.** In the event that the District Attorney has brought such an enforcement action, but does not maintain such records related to it, please provide the case name, case number, and court location in which such an enforcement action was filed.

Please do not hesitate to contact me directly should you require further clarification of this request.

Very truly yours,

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:1ESB1\402492097.1

cc: P. Craig Cardon, Esq.



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Writer's Direct Line: 310-228-3731  
eberman@sheppardmullin.com

April 1, 2010

Our File Number: 04DG-139154

**VIA ELECTRONIC & U.S. MAIL**

Mr. Richard Armstrong  
Deputy District Attorney  
San Diego County District Attorney's Office  
Hall of Justice  
330 W. Broadway  
San Diego, CA 92101  
E-Mail: [publicaffairs@sdca.org](mailto:publicaffairs@sdca.org)

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by San Diego County District Attorney

Dear Mr. Armstrong:

On March 1, 2010, you contacted me by telephone upon your receipt of the enclosed public records request. You referred me to Mr. Paul Leviko, who informed me that he performed a database search of the San Diego District Attorney's records and determined that there were no enforcement actions taken or filed by the San Diego District Attorney against a person or business for violation of California Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information. Before Mr. Leviko hung up the telephone on me, I requested that he send me this confirmation in writing. To date, we have not received such confirmation in writing.

Please confirm what Mr. Leviko informed me verbally over the phone by either initialing this letter (or have Mr. Leviko do so) and returning it to me in the enclosed self-addressed stamped envelope, or sending us a statement in writing. Your prompt attention and response in this matter is appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Elizabeth S. Berman".

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: P. Craig Cardon, Esq.

Writer's Direct Line: 310-228-3731  
eberman@sheppardmullin.com

February 26, 2010

Our File Number: 04DG-139154

**VIA U.S. MAIL**

San Diego City Attorney's Office  
Attn: Civil Litigation Division  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101

San Diego City Attorney's Office  
Attn: Community Justice Division  
1200 Third Avenue, Suite 700  
San Diego, CA 92101

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by San Diego City Attorney

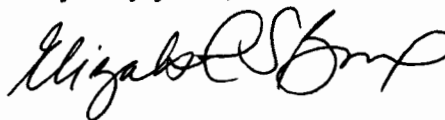
To Whom It May Concern:

We make the following request pursuant to the California Public Records Act of 2004, Government Code §§ 6250 *et seq.*, and the California Constitution, Art. I, § 3(b).

The Song-Beverly Credit Card Act of 1970, California Civil Code § 1747.08 ("Song-Beverly"), provides that the "Attorney General, or any district attorney or city attorney within his or her respective jurisdiction . . . may bring an action in the superior court in the name of the people of the State of California to enjoin violation" of the statute. Civ. Code § 1747.08(f). **Accordingly, we request copies of all records maintained by the San Diego City Attorney's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information.**

Please do not hesitate to contact me directly should you require further clarification of this request. Please provide us with a fee estimate for copies of these records at the standard rate set by the San Diego City Clerk's office.

Very truly yours,



Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: P. Craig Cardon, Esq.

EXHIBIT 3 PAGE 12





JULIO DEGUZMAN  
DIRECTOR, COMMUNITY &  
GOVERNMENT RELATIONS  
(619) 533-4710

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

**JAN I. GOLDSMITH**  
CITY ATTORNEY

March 2, 2010

Elizabeth S. Berman, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
1901 Avenue of the Stars, Ste 1600  
Los Angeles, CA 90067-6017

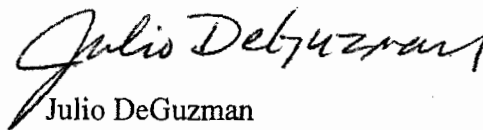
*Public Record Request re Enforcement Actions of  
California Civil Code Section 1747.08 by San Diego City Attorney*

Dear Ms. Berman:

Thank you for your letter of February 26, 2010. Our office does not maintain records so categorized. If you have a particular matter in mind, please narrow your request to that matter.

Thank you.

Sincerely,



Julio DeGuzman  
Director, Community & Government Relations

TRICIA PUMMILL  
ASSISTANT CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

Jan I. Goldsmith  
CITY ATTORNEY

COMMUNITY JUSTICE DIVISION  
CONSUMER AND ENVIRONMENTAL  
PROTECTION UNIT  
1200 THIRD AVENUE, SUITE 700  
SAN DIEGO, CALIFORNIA 92101-4103  
TELEPHONE (619) 533-5500  
FAX (619) 533-5504

March 2, 2010

Elizabeth S. Berman  
Sheppard, Mullin, Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017

*Public Records Act Request Dated February 26, 2010*

Dear Ms. Berman:

The San Diego City Attorney's Office has no records of enforcement action against a person or business for violation of Civil Code section 1747.08 on the basis that the defendant collected, recorded, or otherwise used zip code information.

Sincerely yours,

JAN I. GOLDSMITH, City Attorney

By   
Tricia Pummill  
Assistant City Attorney

TP:mt





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February 26, 2010

Writer's Direct Line: 310-228-3731  
[eberman@sheppardmullin.com](mailto:eberman@sheppardmullin.com)

Our File Number: 04DG-139154

**VIA U.S. MAIL**

Los Angeles County District Attorney's Office  
210 West Temple St.  
Los Angeles, Ca. 90012

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by Los Angeles County District Attorney

To Whom It May Concern:

We make the following request pursuant to the California Public Records Act of 2004, Government Code §§ 6250 *et seq.*, and the California Constitution, Art. I, § 3(b).

The Song-Beverly Credit Card Act, California Civil Code § 1747.08 ("Song-Beverly"), provides that the "Attorney General, or any district attorney or city attorney within his or her respective jurisdiction . . . may bring an action in the superior court in the name of the people of the State of California to enjoin violation" of the statute. Civ. Code § 1747.08(f). **Accordingly, we request copies of all records maintained by the Los Angeles County District Attorney's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information.**

Please do not hesitate to contact me directly should you require further clarification of this request.

Very truly yours,

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:1ESB1\402492204.1

cc: P. Craig Cardon, Esq.  
Consumer Protection Division (via email: [webmail@da.lacounty.gov](mailto:webmail@da.lacounty.gov))

EXHIBIT 5 PAGE 15



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE  
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS  
CONSUMER PROTECTION DIVISION

STEVE COOLEY • District Attorney  
JOHN K. SPILLANE • Chief Deputy District Attorney  
CURTIS A. HAZELL • Assistant District Attorney

JANICE L. MAURIZI • Director

March 10, 2010

Ms. Elizabeth S. Berman  
Sheppard, Mullin, Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, California 90067-6017

Re: *Public Records Act* request of Enforcement Actions pursuant to California Civil Code Section 1747.08

Dear Ms. Berman:

The District Attorney's Office is in receipt of your *Public Records Act* request dated February 26, 2010 requesting "...copies of all records of enforcement actions maintained by the Los Angeles County District Attorney's office related to any enforcement action against a person or business for violation of Civil Code section 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information." Your request was received on March 2, 2010.

This Office does not maintain an automated database for civil cases. We do not believe we have records related to enforcement of Civil Code section 1747.08. However, your request for "all records" does not provide sufficient specificity regarding the records you are seeking. Government Code section 6253(b) requires the request be for "identifiable records".

Your request is overbroad, as some or all documents, if any exist, could be exempt from disclosure. See Government Code sections 6254(f) (investigatory records exempt from disclosure), 6254(c) (identifying information of witnesses - unwarranted invasion of personal privacy), and 6254(k) (attorney work product).

Please feel free to contact Deputy District Attorney Carolyn Nakaki at (213) 580-3222 if you have any questions.

Very truly yours,

STEVE COOLEY  
District Attorney

By *Stanley P. Williams*

STANLEY P. WILLIAMS  
Head Deputy District Attorney  
Consumer Protection Division

201 North Figueroa Street  
Suite 1200  
Los Angeles, CA 90012  
(213) 580-3273

EXHIBIT 5 PAGE 16





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Writer's Direct Line: 310-228-3731  
eberman@sheppardmullin.com

Our File Number: 04DG-139154

February 26, 2010

**VIA U.S. MAIL**

Los Angeles City Attorney's Office  
Civil Division  
200 North Main Street, 8th Floor  
Los Angeles, CA 90012

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by Los Angeles City Attorney

To Whom It May Concern:

We make the following request pursuant to the California Public Records Act of 2004, Government Code §§ 6250 *et seq.*, and the California Constitution, Art. I, § 3(b).

The Song-Beverly Credit Card Act, California Civil Code § 1747.08 ("Song-Beverly"), provides that the "Attorney General, or any district attorney or city attorney within his or her respective jurisdiction . . . may bring an action in the superior court in the name of the people of the State of California to enjoin violation" of the statute. Civ. Code § 1747.08(f). **Accordingly, we request copies of all records maintained by the Los Angeles City Attorney's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information.**

Please do not hesitate to contact me directly should you require further clarification of this request.

Very truly yours,

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: P. Craig Cardon, Esq.

**Elizabeth Berman**

---

**From:** Mike Dundas [Mike.Dundas@lacity.org]  
**Sent:** Thursday, April 08, 2010 3:17 PM  
**To:** Elizabeth Berman  
**Subject:** CPRA Request - Song Beverly

Elizabeth Berman,

This letter is in response to your California Public Records Act ("CPRA") request addressed to the Los Angeles City Attorney's Office ("we" or "this office") for documents related to Cal Civ Code section 1747.08.

This office is cognizant of its responsibilities under the CPRA and recognizes that the statutory scheme was enacted to maximize citizen access to the workings of government. As a result, we have conducted an extensive search of our files for responsive records.

We found no documents that relate to your request. Further, we do not have any record of ever having filed an enforcement action "against a person or business for violation of Cal. Civil Code section 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information."

Please feel free to contact with any questions or future requests.

Mike Dundas  
Deputy City Attorney

\*\*\*\*\* Confidentiality Notice \*\*\*\*\*  
This electronic message transmission contains information from the Office of the Los Angeles City Attorney, which may be confidential or protected by the attorney-client privilege and/or the work product doctrine. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify us immediately by e-mail and delete the original message and any attachments without reading or saving in any manner.  
(v1.5)  
\*\*\*\*\*





**SHEPPARD MULLIN**

SHEPPARD MULLIN RICHTER & HAMPTON LLP

ATTORNEYS AT LAW

Suite 1600 | 1901 Avenue of the Stars | Los Angeles, CA 90067-6017  
310-228-3700 office | 310-228-3701 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Writer's Direct Line: 310-228-3731  
[eberman@sheppardmullin.com](mailto:eberman@sheppardmullin.com)

Our File Number: 04DG-139154

February 26, 2010

**VIA U.S. & ELECTRONIC MAIL**

San Francisco County District Attorney's Office  
Hall of Justice  
850 Bryant Street, Room 322  
San Francisco, CA 94103  
Email: [DistrictAttorney@sfgov.org](mailto:DistrictAttorney@sfgov.org)

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by San Francisco County District Attorney

To Whom It May Concern:

We make the following request pursuant to the California Public Records Act of 2004, Government Code §§ 6250 *et seq.*, and the California Constitution, Art. I, § 3(b).

The Song-Beverly Credit Card Act, California Civil Code § 1747.08 ("Song-Beverly"), provides that the "Attorney General, or any district attorney or city attorney within his or her respective jurisdiction . . . may bring an action in the superior court in the name of the people of the State of California to enjoin violation" of the statute. Civ. Code § 1747.08(f). **Accordingly, we request copies of all records maintained by the San Francisco County District Attorney's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information.**

Please do not hesitate to contact me directly should you require further clarification of this request.

Very truly yours,

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:IESB1\402492237.1

cc: P. Craig Cardon, Esq.

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



KAMALA D. HARRIS  
District Attorney

Paul Henderson  
Chief of Administration

DIRECT DIAL: (415) 553-1845  
E-MAIL: Paul.Henderson@sfgov.org

March 3, 2010

Elizabeth S. Berman  
Sheppard, Mullin, Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017

Re: 2/26/10 Public Records Request

Dear Ms. Berman,

This letter is in reply to Public Records request received by the District Attorney's Office via electronic mail on February 26, 2010. You requested the following:

*"copies of all records maintained by the San Francisco County District Attorney's Office related to any enforcement actions against a person or business for violation of Civil Code §1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information."*

The documents you have requested are included in District Attorney investigation files. District Attorney investigation files cannot be disclosed in response to a records request. District Attorney investigation files are not subject to the California Public Records Act or the San Francisco Administrative Code. All District Attorney records are maintained confidential, even after an investigation has concluded. Government Code section 6254(f) recognizes this by exempting from disclosure "Records of complaints to, or investigations conducted by...any state or local police agency...." The same material is also considered to be "official information" which is privileged pursuant to Evidence Code section 1040 (and therefore exempt from disclosure pursuant to Government Code section 6254(k)), and that the public interest served by not disclosing such records outweighs the public interest served by disclosure of the records. (Government Code section 6255(a).)

The reasoning for this position is further set forth at *Rivero v. Superior Court* (1997) 54 Cal. App. 4th 1048; *Williams v. Superior Court* (1993) 5 Cal. 4th 337 and California Government Code §25303. Briefly, compelled disclosure would obstruct the investigatory and prosecutorial function of the District Attorney and have a chilling effect on potential witnesses in other matters if they knew sensitive information would be subject to public review, at any time.

Accordingly, the District Attorney cannot disclose the information responsive to your request.

Sincerely,

PAUL HENDERSON  
Chief of Administration



Suite 1600 | 1901 Avenue of the Stars | Los Angeles, CA 90067-6017  
310-228-3700 office | 310-228-3701 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

Writer's Direct Line: 310-228-3731  
[eberman@sheppardmullin.com](mailto:eberman@sheppardmullin.com)

March 3, 2010

Our File Number: 04DG-139154

***VIA ELECTRONIC MAIL ONLY***

Mr. Paul Henderson  
Chief of Administration  
San Francisco County District Attorney's Office  
Hall of Justice  
850 Bryant Street, Third Floor  
San Francisco, CA 94103  
Email: [paul.henderson@sfgov.org](mailto:paul.henderson@sfgov.org)

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by San Francisco County District Attorney

Dear Mr. Henderson,

Thank you for your prompt response to my Public Records request. I write to further clarify my request since, based on the statements in your letter of today, it appears that there is a misunderstanding of what records we seek.

We do not seek any records related to the *investigation* of potential violations of Civil Code § 1747.08 by the San Francisco District Attorney's Office. We only seek those public records related to actual *enforcement* of the statute on the basis that the defendant collected, recorded or otherwise used zip code information. These records – e.g., a cease and desist letter or notice of violation communicated to a potential defendant, or a complaint filed in San Francisco County by the District Attorney on behalf of the People – are not confidential under either the California Government Code or the Evidence Code. To the extent that these records do not exist (i.e., the District Attorney has not taken any formal enforcement action for alleged violations of Civil Code § 1747.08), a simple confirmation of that will suffice. Alternatively, in the event that the District Attorney has actually filed complaints for violations of this statute but does not maintain such records related to it, please identify the case name, case number, and court in which the action was filed.

I have reviewed the authority cited in your letter. None of it is applicable here because it deals solely with investigative records. The District Attorney's records related to the Office's actual enforcement of the law on behalf of the public are not confidential or privileged, nor can they reasonably be considered a part of the Office's "investigatory" files under Government Code § 6254(f), which must be construed narrowly (*Dixon v. Superior Court* (2009))

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Mr. Paul Henderson  
March 3, 2010  
Page 2

170 Cal. App. 4<sup>th</sup> 1271, 1275-76; Cal. Const., Art. I, § 3(b)(2)). Indeed, that exception applies "only when there is a 'concrete and definite prospect' of 'criminal law enforcement' proceedings." *Dixon*, 170 Cal. App. 4<sup>th</sup> at 1277. The exemption from disclosure provided by Government Code § 6254(f) is inapplicable where, as here, the request does not seek investigatory files and enforcement of the statute at issue does not involve criminal law enforcement proceedings.

Once the District Attorney takes steps to enforce the law by issuing formal notice of violation or filing a complaint, those actions are a matter of public record (*see, e.g. Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 78 (court records not sealed are public records)) and, as such, are not subject to the "official information" privilege afforded by Evidence Code § 1040 (defining "official information" as information acquired in confidence and "not open, or officially disclosed" to the public).

Again, our request is limited to public records related only to the District Attorney's actual enforcement of Civil Code § 1747.08 based on the collection, recordation or use of zip code information, not to its investigation of potential or actual violations of the statute.

Please do not hesitate to contact me directly should you require further clarification of this request.

Very truly yours,

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:IESB1\402496990.1

cc: P. Craig Cardon, Esq.

CITY AND COUNTY OF SAN FRANCISCO



KAMALA D. HARRIS  
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

Paul Henderson  
Chief of Administration

DIRECT DIAL: (415) 553-1845  
E-MAIL: Paul.Henderson@sfgov.org

March 8, 2010

Elizabeth S. Berman  
Sheppard, Mullin, Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017

Re: 2/26/10 Public Records Request as Clarified on 3/3/10

Dear Ms. Berman,

This letter is in reply to Public Records request received by the District Attorney's Office via electronic mail on February 26, 2010 and clarified in your subsequent letter dated March 3, 2010. You requested the following:

*"public records related to actually enforcement of Civil Code §1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information."*

The District Attorney's Office has no documents that are responsive to your request.

Sincerely,

PAUL HENDERSON  
Chief of Administration





Suite 1600 | 1901 Avenue of the Stars | Los Angeles, CA 90067-6017  
310-228-3700 office | 310-228-3701 fax | www.sheppardmullin.com

Writer's Direct Line: 310-228-3731  
eberman@sheppardmullin.com

February 26, 2010

Our File Number: 04DG-139154

**VIA U.S. & ELECTRONIC MAIL**

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Email: cityattorney@sfgov.org

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by San Francisco City Attorney

To Whom It May Concern:

We make the following request pursuant to the California Public Records Act of 2004, Government Code §§ 6250 *et seq.*, and the California Constitution, Art. I, § 3(b).

The Song-Beverly Credit Card Act, California Civil Code § 1747.08 ("Song-Beverly"), provides that the "Attorney General, or any district attorney or city attorney within his or her respective jurisdiction . . . may bring an action in the superior court in the name of the people of the State of California to enjoin violation" of the statute. Civ. Code § 1747.08(f). **Accordingly, we request copies of all records maintained by the San Francisco City Attorney's office related to any enforcement action against a person or business for violation of Civil Code § 1747.08 on the basis that the defendant collected, recorded or otherwise used zip code information.**

Please do not hesitate to contact me directly should you require further clarification of this request.

Very truly yours,

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:1ESB1\402492329.1

cc: P. Craig Cardon, Esq.





Suite 1600 | 1901 Avenue of the Stars | Los Angeles, CA 90067-6017  
310-228-3700 office | 310-228-3701 fax | www.sheppardmullin.com

Writer's Direct Line: 310-228-3731  
eberman@sheppardmullin.com

April 1, 2010

Our File Number: 04DG-139154

**VIA U.S. & ELECTRONIC MAIL**

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Email: cityattorney@sfgov.org

Re: Public Records Request re Enforcement Actions of California Civil Code Section 1747.08 by San Francisco City Attorney

To Whom It May Concern:

Enclosed please find a copy of a public records request sent to your office via electronic and U.S. mail on February 26, 2010, to which we have not yet received a response. The California Public Records Act requires that, within ten (10) days of receipt of a request, the agency must "determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days." Cal. Gov. Code 6253(c).

We have received nether a determination of our request, nor an extension of the time in which to make such a determination. Please contact me immediately regarding your office's determination of the enclosed request, as over thirty (30) days have passed since it was made.

Very truly yours,

Elizabeth S. Berman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: P. Craig Cardon, Esq.

**Elizabeth Berman**

**From:** Jack Song [Jack.Song@sfgov.org] on behalf of Cityattorney [CityAttorney@sfgov.org]  
**Sent:** Wednesday, April 07, 2010 2:09 PM  
**To:** Elizabeth Berman  
**Subject:** Re: Public Records Request  
**Attachments:** S F City Attorney's Office.PDF

Dear Elizabeth:

We have no documents responsive to your request.

Best regards,

JACK SONG  
Public Information Officer

-----  
OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

(415) 554-4700 Reception  
(415) 554-4715 Facsimile  
(415) 554-6770 TTY  
[www.sfcityattorney.org](http://www.sfcityattorney.org)

"Elizabeth Berman" <EBerman@sheppardmullin.com>

To <cityattorney@sfgov.org>

04/01/2010 03:06 PM

cc "Craig Cardon" <CCardon@sheppardmullin.com>

Subject Public Records Request

<<S F City Attorney's Office.PDF>>

Please see the attached. Your prompt attention is appreciated.

Very truly yours,  
Elizabeth Berman

1901 Avenue of the Stars  
Suite 1600  
Los Angeles, CA 90067-6017  
310.228.3700 office  
310.228.3701 fax  
[www.sheppardmullin.com](http://www.sheppardmullin.com)

EXHIBIT 8 PAGE 26

**Elizabeth Berman**  
310.228.3731 *direct* | 310.228.3908 *direct fax*  
EBerman@sheppardmullin.com

Circular 230 Notice: In accordance with Treasury Regulations we notify you that any tax advice given herein (or in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or in any attachments).

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

3 I am employed in the County of San Francisco; I am over the age of eighteen years  
4 and not a party to the within entitled action; my business address is Four Embarcadero  
Center, 17th Floor, San Francisco, California 94111-4109.

5 On April 12, 2010, I served the following document(s) described as  
6 **REQUEST FOR JUDICIAL NOTICE AND [PROPOSED] ORDER** on the interested  
7 party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or  
8 packages addressed as follows:

9 James R. Patterson, Esq. 1 Copy

10 Cary A. Kinkead, Esq.

11 Matthew J. O'Connor, Esq.

12 Harrison Patterson O'Connor & Kinkead LLP

13 402 West Broadway, 29<sup>th</sup> Floor

14 San Diego, CA 92101

15 Telephone: (619) 756-6990

16 Facsimile: (619) 756-6991

17 *Attorneys for Plaintiff and Appellant Jessica Pineda*

18 James M. Lindsay, Esq. 1 Copy

19 Gene J. Stonebarger, Esq.

20 Richard D. Lambert, Esq.

21 Lindsay & Stonebarger

22 620 Coolidge Drive, Suite 225

23 Folsom, CA 95630

24 Telephone: (916) 294-0002

25 Facsimile: (916) 294-0012

26 *Attorneys for Plaintiff and Appellant Jessica Pineda*

27 Court of Appeal 1 Copy

28 Fourth District, Division One

Symphony Towers

750 B. Street, Suite 300

San Diego, California 92101

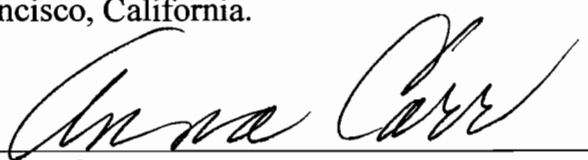
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Honorable Ronald S. Praiger  
San Diego Superior Court  
Central Division  
Department 71  
330 W. Broadway  
San Diego, California 92101

1 Copy

- BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
  
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 12, 2010, at San Francisco, California.

  
\_\_\_\_\_  
Anna Carr

