


Class Certification Denied in Gossoo v. Microsoft

Summer 2014

Since the California Supreme Court's 2011 decision in *Pineda v. Williams-Sonoma* (known as the order that launched a thousand class actions), the California plaintiffs' bar has been filing putative class actions alleging violations of the Song-Beverly Credit Card Act, Cal. Civ. Code § 1747.08 et seq., whenever and wherever possible. These lawsuits are premised upon the allegedly improper collection of a credit card holder's personally identifiable information ("PII") such as addresses, telephone numbers, or email addresses during retail transactions. If found liable, retailers can be subject to as much as \$250 for the first violation and \$1,000 for each subsequent violation.

In the last few years, Song-Beverly Plaintiffs have targeted firm client, Microsoft Corporation. In the putative class action *Salmonson v. Microsoft*, the Willenken Firm defeated a Song-Beverly claim by arguing the Act does not apply to online transactions like the one alleged in that complaint – which, at the time, was a hotly-disputed legal question in California courts.

The California Supreme Court later accepted that argument in *Apple v. Superior Court (Krescent)*, and it is now the law in California. In 2013, Pamela Gossoo filed a second putative class action against Microsoft, alleging that Microsoft violated the Act in its brick-and-mortar stores by requesting PII during credit card purchases. Microsoft again retained the Willenken Firm to defend this claim.

Undoubtedly buoyed by class-wide settlements and the certification of Song-Beverly classes in other cases, Plaintiff brought a motion to certify a class in *Gossoo*. Microsoft opposed, arguing certification was inappropriate as individualized issues predominated because whether a consumer believed that providing PII was a precondition to paying with a credit card required an analysis of, inter alia, what was said during any particular transaction, when PII might have been requested, and whether the consumer volunteered the PII for some purpose (e.g., receiving a receipt by e-mail). Ultimately, the district court agreed with Microsoft and denied certification. The matter settled on confidential terms thereafter.