

**S199384**

IN THE SUPREME COURT OF CALIFORNIA

**APPLE INC.**, a California corporation,

*Petitioner,*

vs.

**SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,**

*Respondent.*

**DAVID KRESCENT,**

individually and on behalf of a class of persons similarly situated,

*Real Parties in Interest.*

Court of Appeal Case No. B238097  
Los Angeles Superior Court Civil Case No. BC463305  
(Related to Case Nos. BC462492 and BC462494)

**MOTION TO TAKE JUDICIAL NOTICE OF COURT  
DECISIONS IN SUPPORT OF PETITION FOR REVIEW;  
DECLARATION OF PAUL W. CANE, JR.;  
[PROPOSED] ORDER**

**SUPREME COURT  
FILED**

**JAN 13 2012**

**Frederick K. Ohlrich Clerk  
Deputy**

PAUL HASTINGS LLP  
DAVID M. WALSH (SB# 120761)  
PAUL W. CANE, JR. (SB# 100458)  
ADAM M. SEVELL (SB# 266428)  
515 South Flower Street, Twenty-Fifth Floor  
Los Angeles, California 90071-2228  
Telephone: (213) 683-6000; Facsimile: (213) 627-0705

Attorneys for Petitioner  
APPLE INC.

No. S094500

IN THE SUPREME COURT OF CALIFORNIA

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Los Angeles, California 90071-2228  
Telephone: (213) 683-6000; Facsimile: (213) 627-0705

Attorneys for Petitioner  
APPLE INC.

Pursuant to California Evidence Code Section 452(d) and California Rule of Court 8.504(e)(1)(D), Petitioner Apple Inc. hereby respectfully requests that the Court take judicial notice of the following documents (attached as exhibits to the accompanying Declaration) in connection with Apple's Petition for Review.

**EXHIBIT 1:** A true and correct copy of the January 6, 2012 Order granting defendant's motion to dismiss, with prejudice, in *Salmonson v. Microsoft Corp.* (C.D. Cal. Jan. 6, 2012, No. 2:11-cv-05449-JHN-JC).

**EXHIBIT 2:** A true and correct copy of the January 6, 2012 Order granting defendant's motion to dismiss, with prejudice, in *Mehrens v. Redbox Automated Retail LLC* (C.D. Cal. Jan. 6, 2012, No. 2:11-cv-02936-JHN-E).

**EXHIBIT 3:** A true and correct copy of the August 24, 2011 Order sustaining defendant's demurrer, without leave to amend, in the case entitled *Gonor v. craigslist, Inc.* (Super. Ct. S.F. County, Aug. 24, 2011, No. CGC-11-511332).

This Motion to Take Judicial Notice is made on the ground that this Court has the authority to take judicial notice of records of the courts of this State and any court of the United States. Cal. Evid. Code § 452(d); *People v. Woodell* (1998) 17 Cal. 4th 448, 455 [courts may "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached . . . ."] [emphasis deleted]; *Wolkowitz v. Redland Ins. Co.* (2003) 112 Cal.App.4th 154, 160 n.11 [taking judicial notice of orders entered by a U.S. District Court]. The

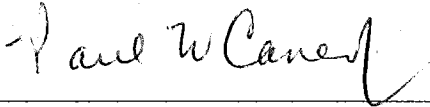
relevance of Exhibits 1, 2 and 3 is set forth in Apple's Petition for Review, filed today.

Based on the foregoing, Apple respectfully requests that the Court take judicial notice of the documents listed above.

Respectfully submitted,

DATED: January 13, 2012

PAUL HASTINGS LLP

By:   
\_\_\_\_\_  
Paul W. Cane, Jr.

Attorneys for Petitioner  
APPLE INC.

**DECLARATION OF PAUL W. CANE, JR.**

1. I have personal knowledge of the matters set forth herein.
  
2. I am a partner in Paul Hastings LLP, counsel for Apple Inc. in this case.
  
3. Attached to this declaration are true and correct copies of three court decisions cited in Apple's petition for review:

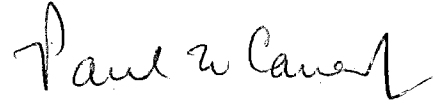
**EXHIBIT 1:** The January 6, 2012 Order granting defendant's motion to dismiss, with prejudice, in *Salmonson v. Microsoft Corp.* (C.D. Cal. Jan. 6, 2012, No. 2:11-cv-05449-JHN-JC).

**EXHIBIT 2:** The January 6, 2012 Order granting defendant's motion to dismiss, with prejudice, in *Mehrens v. Redbox Automated Retail LLC* (C.D. Cal. Jan. 6, 2012, No. 2:11-cv-02936-JHN-E).

**EXHIBIT 3:** The August 24, 2011 Order sustaining defendant's demurrer, without leave to amend, in *Gonor v. craigslist, Inc.* (Super. Ct. S.F. County, Aug. 24, 2011, No. CGC-11-511332).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of January 2012, in the City and  
County of San Francisco, California

A handwritten signature in cursive script that reads "Paul W. Cane, Jr." The signature is written in dark ink and is positioned above a horizontal line.

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Paul W. Cane, Jr.

# TAB 1

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:11-cv-05449-JHN -JC Date January 6, 2012  
Title Jason Salmonson v. Microsoft Corporation et al

Present: The Honorable JACQUELINE H. NGUYEN

Alicia Mamer Deputy Clerk	Not Reported Court Reporter / Recorder	N/A Tape No.
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Attorneys Present for Plaintiffs: Not present  
Attorneys Present for Defendants: Not present

Proceedings: **ORDER GRANTING DEFENDANT’S MOTION TO DISMISS THE CASE WITH PREJUDICE [7] (IN CHAMBERS)**

The matter is before the Court on Defendant Microsoft Corporation’s (“Defendant”) Motion to Dismiss for Failure to State a Claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (“Motion”). (Docket No. 7.) The motion is made on the ground that Plaintiff Jason Salmonson’s (“Plaintiff”) sole cause of action—violation of the Song-Beverly Credit Card Act of 1971, California Civil Code 1747.08 (hereinafter, “section 1747.08” or “the Act”)—fails to state a claim because section 1747.08 does not apply to online transactions.<sup>1</sup> The Court held a hearing on August 8, 2011, after which the Court took the Motion under submission. Having considered the moving papers, opposition, reply, and supporting documents, as well as the parties’ arguments at the hearing, the Court GRANTS the Motion and dismisses Plaintiff’s sole cause of action with prejudice.

**I. FACTUAL BACKGROUND**

The pertinent facts, which are culled from the Complaint, are taken as true for purposes of this Motion. (See Docket no. 1, Notice of Removal, Ex. A [Compl].)

On March 5, 2011, Plaintiff entered into an online transaction on Defendant’s website to download a copy of Microsoft’s Office Home and Student 2010 software over the Internet. (Compl. ¶¶ 1, 15.) Plaintiff used his credit card to pay for the download. (*Id.* ¶

<sup>1</sup> Plaintiff brought this putative class action on his behalf and on behalf of all similarly situated.



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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.

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3.) During this online transaction, Defendant required Plaintiff to provide "his name, home address, phone number, e-mail address, credit card number, credit card expiration date and the credit security code or CCID (credit card identification number)." (*Id.*) Plaintiff tried to complete the transaction without providing his telephone number, but "providing a telephone number was a requirement of completing the credit card purchase." (*Id.*) Plaintiff then provided his telephone number and the other information, and used his credit card to pay for the download. (*Id.*)

Based on these allegations, Plaintiff asserts that Defendant violated section 1747.08 by requiring him to provide his address and telephone number.

II. DISCUSSION

Section 1747.08 provides in relevant part:

- (a) Except as provided in subdivision (c), no . . . corporation that accepts credit cards for the transaction of business shall do any of the following:
- (1) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to write any personal identification information upon the credit card transaction form or otherwise.
  - (2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to provide personal identification information, which the . . . corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise.
  - (3) Utilize, in any credit card transaction, a credit card form which contains preprinted spaces specifically designated for filling in any personal identification information of the cardholder.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:11-cv-05449-JHN -JC

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- (b) For purposes of this section “personal 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.*

Cal. Civ. Code § 1747.08(a) and (b) (emphasis added).

**A. Section 1747.08 Does Not Apply to Online Transactions**

The issue presented is whether section 1747.08 applies to online transactions in which a credit card is used to obtain a license to use software.

When faced with an issue of statutory interpretation, “we look first to the plain language of the statute, construing the provisions of the entire law, including its object and policy, to ascertain the intent of Congress.” *United States v. 475 Martin Lane*, 545 F.3d 1134, 1141 (9th Cir. 2008) (quoting *United States v. Mohrbacher*, 182 F.3d 1041, 1048 (9th Cir. 1999)).

Where statutory language is clear and unambiguous, it will be applied according to its terms. *Wilson v. Safeway Stores, Inc.*, 52 Cal. App. 4th 267, 272, 60 Cal. Rptr. 2d 532 (1997). Here, the Act prohibits merchants from requiring the cardholder to *write* personal identification information on the credit card form, requiring the cardholder to provide personal identification information that merchants then *write* on the credit card form, and utilizing forms with *preprinted* spaces for personal identification information. This language suggests that “pen and paper” transactions are contemplated, rather than electronic entry of numbers on a keypad or touchscreen, and the Act makes no specific reference to online or kiosk transactions.

The purpose of the Act further supports an interpretation that it is limited to brick-and-mortar transactions. The original amendment to the Act addressed two privacy concerns: “[F]irst, 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; and second, that acts of harassment and violence were being committed by store clerks who obtained customers’ phone numbers and addresses.”

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No. 2:11-cv-05449-JHN -JC

Date January 6, 2012

Title Jason Salmonson v. Microsoft Corporation et al

*Florez v. Linens 'N Things, Inc.*, 108 Cal.App.4th 447, 452 (2003).

Another court in this district has dealt with this same issue and held that section 1747.08's proscription against collecting personal identification information does not apply to online transactions, finding that the policy and purpose of the Act did not address the unique fraud concerns which accompany such transactions. *Saulic v. Symantec Corp.*, 596 F. Supp. 2d 1323, 1336 (C.D. Cal. 2009).<sup>2</sup>

The plaintiff in *Saulic* alleged that the defendants violated section 1747.08 by (1) requiring the plaintiff to submit his address and telephone number as a condition of completing an online purchase of software and (2) requiring the plaintiff to submit his address and telephone number again when he renewed the same product online. *Id.* at 1331. In *Saulic*, as here, the download did not involve shipment to the plaintiff of any physical product; rather, the software was downloaded electronically over the Internet. *Id.* at 1325-26. Likewise, in both cases, the plaintiff, "[a]t the purchase screen, . . . was presented with a credit card form with spaces for filling in [personal identification information], and it required that he disclose both his address and telephone number. Using his credit card, . . . plaintiff completed the purchase and downloaded" the software. *Id.* at 1325-26.

The plaintiff in *Saulic* filed a motion for class certification, alleging that collection of personal identification information as a condition of a transaction to download software violates section 1747.08. Denying the motion, the court held that section 1747.08 did not apply to his online transaction, and accordingly ruled that "plaintiff's claim cannot be maintained." *Id.* at 1336. In analyzing whether plaintiff had standing to bring his claim, the court noted that, "[p]laintiff does not cite, and the [c]ourt does not find, any state or

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<sup>2</sup> Plaintiff argues that the court's opinion regarding *Saulic*'s ability to maintain a claim is merely *dicta* because it was both unnecessary and inappropriate for Judge Stotler to reach the legal question in a class certification proceeding. (Opp'n at 8.) This argument is unavailing because the motion for class certification was denied *because* the transaction at issue was not covered by section 1747.08 and thus, *Saulic*'s "claim [could not] be maintained." *Saulic*, 596 F. Supp. 2d at 1336. In other words, the plaintiff's inability to maintain a cognizable claim formed the basis for denying the class certification motion.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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federal case in which a violation of section 1747.08 is found based on an online transaction.” *Id.* at 1332. To determine whether section 1747.08 applies to online transactions, the court in *Saulic* examined the purpose of section 1747.08. Judge Alicemarie H. Stotler observed:

The purpose of the Act appears to be to protect consumer privacy in the course of a retail transaction, and [the California Assembly Committee on Finance and Insurance] analysis suggests the Act was *specifically passed with a brick-and-mortar merchant environment in mind*. While the use of computer technology is mentioned, the language does not suggest the Legislature considered online transactions or the perils of misappropriation of consumer credit information in an online environment where there is no ability to confirm the identity of the customer. Neither the language of the Act nor its legislative history suggests the Act includes online transactions.

*Id.* at 1333–34 (emphasis added). Recognizing that online transactions raise unique fraud concerns, the court highlighted that “[i]n an online transaction, without a request for [personal identification information], online merchants must ultimately accept payment with nothing more than a name and credit card number—there is no ‘verification.’” *Id.* at 1335. Finding that the Act is apparently concerned with the use of personal identification information for unsolicited marketing, not as a fraud prevention measure, the court held that “online transactions are not encompassed within the Act.” *Id.* at 1336.

The Court finds Judge Stotler’s reasoning in *Saulic* persuasive. The Act was intended to combat the practice of collecting customer information that would ultimately be used for the sole benefit of the merchant corporation. In the context of a brick-and-mortar transaction, a customer’s identity can be verified by having a salesperson examine the customer’s driver’s license or passport. Thus, it is unnecessary to record a customer’s personal information in a brick-and-mortar transaction, and the only ascertainable reason for doing so would be for improper marketing or solicitation purposes. By contrast, collection of personal information in an online transaction may be the only means of verifying a customer’s identity in order to prevent credit card fraud. Given the Act’s focus on preventing unnecessary use of personal identification information, the language cannot reasonably be read to encompass online transactions, where recording such

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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information is necessary for a legitimate purpose.<sup>3</sup>

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<sup>3</sup> Plaintiff attempts to distinguish *Saulic* by relying on the fact that the court there faced a class certification motion, not a 12(b)(6) motion. (Opp'n at 9-10.) The distinction is immaterial. The holding in *Saulic* is based on the court's interpretation of the statute and a review of its legislative history. It does not hinge on evidence outside the pleadings. Therefore, Plaintiff's procedural distinction does not alter this Court's analysis.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No.	2:11-cv-05449-JHN -JC	Date	January 6, 2012
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**B. Pineda Supports Dismissal**

Plaintiff argues that *Saulic* was decided prior to *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524 (2011), a recent California Supreme Court case interpreting the Act and examining its legislative history. (Opp'n at 10.) In *Pineda*, the court addressed the issue of "whether section 1747.08 is violated when a business requests and records a customer's ZIP code during a credit card transaction." 51 Cal. 4th at 527 (emphasis added). Having reviewed the statute's plain language, protective purpose, and legislative history, the court in *Pineda* held that a ZIP code constitutes "personal identification information" as that phrase is used in section 1747.08. *Id.* Therefore, requesting and recording a cardholder's ZIP code, without more, violates the Act. *Id.* at 527–28.

However, *Saulic*'s discussion of the legislative history of section 1747.08 is consistent with *Pineda*. In *Pineda*, the court explained that in 1990, the Legislature enacted 1747.8 (later renumbered as section 1747.08) "seeking 'to address the misuse of personal identification information for, inter alia, marketing purposes, and [finding] that there would be no legitimate need to obtain such information from credit card customers if it was not necessary to the completion of the credit card transaction.'" *Pineda*, 51 Cal. 4th at 534 (citation omitted, alteration in original). "The statute's overriding purpose was to 'protect the personal privacy of consumers who pay for transactions with credit cards.'" *Id.* (citations omitted). The court concluded that "the legislative history of the [Act] in general, and section 1747.08 in particular, demonstrates the Legislature intended to provide robust consumer protections by prohibiting retailers from soliciting and recording information about the cardholder that is *unnecessary* to the credit card transaction." *Id.* at 535–36 (emphasis added).

Because *Pineda* involved a face-to-face transaction, there was "no legitimate need to obtain such information from credit card customers" in that case. 51 Cal. 4th at 534. As discussed above, the online transactions in *Saulic* and the case at hand present unique fraud concerns, and nothing in the legislative history indicates that the Act was intended to cover online transactions. Nor is there any hint that the Legislature considered the fraud concerns raised in the context of online transactions. Therefore, the Court finds section 1747.08 does not apply to online transactions.

**III. CONCLUSION**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.

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Jason Salmonson v. Microsoft Corporation et al

Based on the foregoing, Plaintiff's sole cause of action is dismissed. Because no amendment can cure the defect in the Complaint, the matter is dismissed with prejudice.

**IT IS SO ORDERED.**<sup>4</sup>

Initials of Preparer

AM

N/A

<sup>4</sup> The parties filed requests for judicial notice concurrent with their briefs. The Court need not reach these requests as they have no bearing on the ultimate disposition of this motion.

# **TAB 2**



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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:11-cv-02936-JHN -Ex	Date	January 6, 2012
Title	Michael Mehrens v. Redbox Automated Retail LLC et al		

Present The Honorable	JACQUELINE H. NGUYEN
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Alicia Mamer	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not present	Not present	

**Proceedings: ORDER GRANTING DEFENDANT’S MOTION TO DISMISS THE CASE WITH PREJUDICE [15] AND DENYING PLAINTIFF’S MOTION TO CERTIFY AS MOOT [39] (IN CHAMBERS)**

The matter is before the Court on Defendant Redbox Automated Retail, LLC’s (“Defendant”) motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Docket No. 15.) The motion is made on the ground that Plaintiff Michael Mehren’s (“Plaintiff”) *sole* cause of action—violation of the Song-Beverly Credit Card Act of 1971, California Civil Code 1747.08 (hereinafter, “section 1747.08” or “the Act”)—fails to state a claim because section 1747.08 does not apply to Redbox transactions.<sup>1</sup> On June 24, 2011, the Court deemed the matter appropriate for decision without oral argument and took the matter under submission. For the following reasons, the Court GRANTS the motion and dismisses Plaintiff’s sole cause of action with prejudice.

**I. FACTUAL BACKGROUND**

The pertinent facts, which are culled from the First Amended Complaint (“FAC”), are taken as true for the purposes of this Motion. (Docket no. 12.)

Defendant operates self-service DVD kiosks throughout the United States. (FAC ¶ 6.) In order to rent or buy a movie, customers use a touch screen to select a movie and then

<sup>1</sup> Plaintiff brought this putative class action on his behalf and on behalf of all similarly situated.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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swipe a credit or debit card to pay for the movie. (*Id.*) After customers swipe their credit or debit card, the kiosk screen displays the following statement: "For security reasons, please enter the ZIP code associated with your card's billing address, and press 'ENTER'."<sup>2</sup> (*Id.* at ¶ 16.) After entering their ZIP code, customers are then prompted to enter their email address. (*Id.* at ¶ 19.)

Plaintiff Michael Mehrens ("Plaintiff") alleges that during the year immediately preceding the filing of this action, he rented DVDs from Defendant using his credit card. (*Id.* at ¶ 75.) During each transaction, Defendant requested and/or required Plaintiff to provide his ZIP code and email address. (*Id.*) Plaintiff claims that Defendant uses the personal identifying information for the purpose of determining where to place future Redbox kiosks. (*Id.* at ¶¶ 31, 49.)

Based on these allegations, Plaintiff asserts that Defendant violated the Song-Beverly Credit Card Act of 1971 (hereinafter, "section 1747.08" or "the Act") by requiring him to provide his ZIP code and email address.

## II. DISCUSSION

Section 1747.08 provides in relevant part:

- (a) Except as provided in subdivision (c), no . . . corporation that accepts credit cards for the transaction of business shall do any of the following:
  - (1) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to write any personal identification information upon the credit card transaction form or otherwise.
  - (2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder

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<sup>2</sup> Defendant notes that Exhibit C to the FAC states: "Please enter the ZIP code associated with your payment card's billing address, and press 'ENTER'." (Mot. 5 n.3.)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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to provide personal identification information, which the . . . corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise.

- (3) Utilize, in any credit card transaction, a credit card form which contains preprinted spaces specifically designated for filling in any personal identification information of the cardholder.

- (b) For purposes of this section “personal 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.*

Cal. Civ. Code § 1747.08(a) and (b) (emphasis added).

**A. Section 1747.08 Does Not Apply to Online Transactions**

The issue presented is whether section 1747.08 applies to Redbox transactions in which a customer uses a credit card to rent or buy a DVD at an unattended stand alone kiosk.

When faced with an issue of statutory interpretation, “we look first to the plain language of the statute, construing the provisions of the entire law, including its object and policy, to ascertain the intent of Congress.” *United States v. 475 Martin Lane*, 545 F.3d 1134, 1141 (9th Cir. 2008) (quoting *United States v. Mohrbacher*, 182 F.3d 1041, 1048 (9th Cir. 1999)).

Where statutory language is clear and unambiguous, it will be applied according to its terms. *Wilson v. Safeway Stores, Inc.*, 52 Cal. App. 4th 267, 272, 60 Cal. Rptr. 2d 532 (1997). Here, the Act prohibits merchants from requiring the cardholder to *write* personal identification information on the credit card form, requiring the cardholder to provide personal identification information that merchants then *write* on the credit card form, and utilizing forms with *preprinted* spaces for personal identification information. This language suggests that “pen and paper” transactions are contemplated, rather than

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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electronic entry of numbers on a keypad or touchscreen, and the Act makes no specific reference to online or kiosk transactions.

The purpose of the Act further supports an interpretation that it is limited to brick-and-mortar transactions. The original amendment to the Act addressed two privacy concerns: “[F]irst, 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; and second, that acts of harassment and violence were being committed by store clerks who obtained customers’ phone numbers and addresses.” *Florez v. Linens ‘N Things, Inc.*, 108 Cal.App.4th 447, 452 (2003).

Another court in this district has dealt with this same issue and held that section 1747.08's proscription against collecting personal identification information does not apply to online transactions, finding that the policy and purpose of the Act did not address the unique fraud concerns which accompany such transactions. *Saulic v. Symantec Corp.*, 596 F. Supp. 2d 1323, 1336 (C.D. Cal. 2009).

The plaintiff in *Saulic* alleged that the defendants violated section 1747.08 by (1) requiring the plaintiff to submit his address and telephone number as a condition of completing an online purchase of software and (2) requiring the plaintiff to submit his address and telephone number again when he renewed the same product online. *Id.* at 1331. In analyzing whether plaintiff had standing to bring his claim, the court noted that, “[p]laintiff does not cite, and the [c]ourt does not find, any state or federal case in which a violation of section 1747.08 is found based on an online transaction.” *Id.* at 1332. To determine whether section 1747.08 applies to online transactions, the court in *Saulic* examined the purpose of section 1747.08. Judge Alicemarie H. Stotler observed:

The purpose of the Act appears to be to protect consumer privacy in the course of a retail transaction, and [the California Assembly Committee on Finance and Insurance] analysis suggests the Act was *specifically passed with a brick-and-mortar merchant environment in mind*. While the use of computer technology is mentioned, the language does not suggest the Legislature considered online transactions or the perils of misappropriation of consumer credit information in an online environment where there is no ability to confirm the identity of the customer. Neither the language of the

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:11-cv-02936-JHN -Ex	Date	January 6, 2012
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Act nor its legislative history suggests the Act includes online transactions.

*Id.* at 1333–34 (emphasis added). Recognizing that online transactions raise unique fraud concerns, the court highlighted that “[i]n an online transaction, without a request for personal identification information, online merchants must ultimately accept payment with nothing more than a name and credit card number—there is no ‘verification.’” *Id.* at 1335. Finding that the Act’s purpose was to prevent the use of personal identification information for unsolicited marketing, not as a fraud prevention measure, the court held that “online transactions are not encompassed within the Act.” *Id.* at 1336.

The Court finds Judge Stotler’s reasoning in *Saulic* persuasive. The Act was intended to combat the practice of collecting customer information that would ultimately be used for the sole benefit of the merchant corporation. In the context of a brick-and-mortar transaction, a customer’s identity can be verified by having a salesperson examine the customer’s driver’s license or passport. Thus, it is unnecessary to record a customer’s personal information in a brick-and-mortar transaction, and the only ascertainable reason for doing so would be for improper marketing or solicitation purposes. By contrast, collection of personal information in an online or unattended kiosk transaction may be the only means of verifying a customer’s identity in order to prevent credit card fraud. Given the Act’s focus on preventing unnecessary use of personal identification information, the language cannot reasonably be read to encompass online transactions, where recording such information is necessary for a legitimate purpose.

**B. The Statute Is Inapplicable to Transactions at a Stand Alone Unmanned Redbox Kiosk For the Same Reasons that *Saulic* Found the Statute Does Not Apply to Online Transactions**

Defendant relies on the reasoning in *Saulic* and contends that Redbox kiosk transactions are analogous to online transactions and are therefore outside the purview of section 1747.08. (Mot. 7.) Plaintiff counters that Redbox kiosk transactions are “brick-and-mortar” transactions and therefore fall under section 1747.08. Plaintiff argues that unlike online transactions, customers cannot rent or buy Redbox DVDs without leaving the comfort of their home or office. (Opp’n 6.)

Plaintiff’s distinction is immaterial. The same fraud concerns upon which *Saulic* was

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No 2:11-cv-02936-JHN -Ex

Date January 6, 2012

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premised also exist in the context of Redbox stand alone unmanned kiosk transactions. In *Saulic*, the court explained that “an online transaction raises fraud concerns” and noted that there “are numerous differences between a ‘brick and mortar’ purchase and an online purchase and the merchant’s ability to ensure the cardholder is who she claims to be.” *Saulic*, 596 F. Supp. 2d at 1335. Plaintiff argues that Redbox could employ alternative identity verification methods, such as creating a Redbox only pin number or pass code or equipping Redbox kiosks with ID scanners. (Opp’n at 11.) Despite Plaintiff’s suggestions, the fact remains that the fraud concerns associated with an unmanned Redbox kiosk are similar to the fraud concerns associated with an online transaction.<sup>3</sup>

Moreover, *Saulic* is consistent with the recent California Supreme Court case *Pineda v. Williams-Sonoma Stores, Inc*, 51 Cal. 4th 524 (2011). In *Pineda*, the court examined the legislative history of section 1747.8, later renumbered as section 1747.08. The court explained that, in 1990, the Legislature enacted 1747.8 “seeking ‘to address the misuse of personal identification information for, inter alia, marketing purposes, and [finding] that there would be no legitimate need to obtain such information from credit card customers if it was not necessary to the completion of the credit card transaction.’” *Pineda*, 51 Cal. 4th at 534 (citation omitted, alteration in original). Here, a legitimate need—fraud prevention—existed to justify the request of Plaintiff’s ZIP code in order to complete the transaction.

Finally, nothing in the legislative history indicates that legislators intended section 1747.08 to cover kiosk transactions such as those at issue here. Nor is there any hint that the Legislature considered the fraud concerns raised in the context of unmanned kiosk or online transactions. Therefore, the Court finds that section 1747.08 does not apply to Defendant’s Redbox unmanned kiosk transactions.

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<sup>3</sup> Plaintiff draws an analogy between Redbox transactions and pay-at-the-pump transactions “for personal or family purposes,” which the California legislature explicitly included within the Act’s coverage. (Opp’n at 8 (citing Section 1747.03(a)(2)).) However, pay-at-the-pump transactions involve onsite attendants, who are available to monitor and investigate suspicious credit card use. By contrast, there is no attendant monitoring credit card use and identifying suspicious activity at an unmanned Redbox kiosk. Absent a means of verifying identity up front, a thief could conceivably empty an entire kiosk unseen and unnoticed.

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UNITED STATES DISTRICT COURT  
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**III. CONCLUSION**

Based on the foregoing, Plaintiff's sole cause of action is dismissed. Because no amendment can cure the defect in the Complaint, the matter is dismissed with prejudice. Plaintiff's Motion to Certify (docket no. 39) is DENIED as moot.

**IT IS SO ORDERED.**

Initials of Preparer : AM ; N/A

# TAB 3



1 BOBBIE J. WILSON (Bar No. 148317)  
2 JOSHUA A. REITEN (Bar No. 238985)  
3 EUPHEMIA N. THOMOPULOS (Bar No. 262107)  
4 PERKINS COIE LLP  
5 Four Embarcadero Center, Suite 2400  
San Francisco, CA 94111-4131  
Telephone: 415.344.7000  
Facsimile: 415.344.7050  
E-mail: jreiten@perkinscoie.com

6 Attorneys for Defendant  
7 craigslist, inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10  
11 NORMAN GONOR, individually and on  
12 behalf of a class of persons similarly  
situated,  
13 Plaintiff,  
14 v.  
15 CRAIGSLIST, INC., a Delaware  
16 corporation; and DOES 1 to 100, Inclusive,  
17 Defendants.

No. CGC-11-511332

Action Filed: May 31, 2011

**[PROPOSED] ORDER SUSTAINING  
DEFENDANT CRAIGSLIST, INC.'S  
DEMURRER TO PLAINTIFF'S  
COMPLAINT**

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 24 2011

CLERK OF THE COURT  
BY SAJJA RAVINANTAPRICHIA  
Clerk



**[PROPOSED] ORDER**

Good cause appearing, Apple Inc.'s motion to take judicial notice is GRANTED.

DATED: February \_\_, 2012

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Justice of the Supreme Court

LEGAL\_US\_W # 70124192.1

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
CITY OF LOS ANGELES AND COUNTY OF ) ss:  
LOS ANGELES )

I am employed in the City of Los Angeles and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 515 S. Flower St., 25th Floor, Los Angeles, CA 90071-2228.

On January 13, 2012, I served the foregoing document(s) described as:

**MOTION TO TAKE JUDICIAL NOTICE OF COURT DECISIONS IN SUPPORT OF PETITION FOR REVIEW; DECLARATION OF PAUL W. CANE, JR.; [PROPOSED] ORDER**

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Edwin C. Schreiber, Esq.  
Eric A. Schreiber, Esq.  
Schreiber & Schreiber, Inc.  
16501 Ventura Blvd., Suite 401  
Encino, CA 91436-2068  
Tel: 818-789-2577  
Fax: 818-789-3391  
*Attorneys for Plaintiff David Krescent*

Superior Court of California,  
County of Los Angeles  
Central Civil West Courthouse  
Dept. 322  
600 S. Commonwealth Ave.  
Los Angeles, CA 90005

Court of Appeal,  
2nd Appellate District  
Ronald Reagan State Building  
300 S. Spring Street  
2nd Floor, North Tower  
Los Angeles, CA 90013



**VIA PERSONAL DELIVERY:**

I caused such document(s) listed above to be personally delivered, by Nationwide Legal, Inc., to the offices of the addressee(s) pursuant to CCP § 1011.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 13, 2012, at Los Angeles, California.

Linda Young  
\_\_\_\_\_  
(Print Name)

*Linda Young*  
\_\_\_\_\_  
(Signature)