

# One Minute Memo<sup>®</sup>



## The California Supreme Court Holds That The Song-Beverly Credit Card Act Does Not Prohibit Retailers From Obtaining And Recording Personal Identification Information In Online Transactions For Purchase Of Downloadable Products

In its second major decision in two years involving the Song-Beverly Credit Card Act – which prohibits retailers from obtaining and recording customers’ “personal identification information” as a condition to accepting credit cards for payment of goods or services – the California Supreme Court gave retailers a post-holiday victory when it held in *Apple v. Superior Court* that California Civil Code section 1747.08 does not prohibit online retailers from obtaining and recording customers’ addresses and telephone numbers as a prerequisite to accepting credit cards as payment for purchases of downloadable items.

Section 1747.08 was enacted and amended in the early 1990s when online commerce did not exist. The issue before the Supreme Court in *Apple* was whether the Act applies to online transactions where the product is delivered electronically, such as the delivery of content via Apple’s iTunes® store. In the opinion issued today, the Supreme Court held that obtaining personal identification information during online transactions for downloadable products does not violate section 1747.08.

The Supreme Court did not consider if the Act applies to online transactions that do not involve electronically downloadable products. It also did not consider if the Act applies to mail-order or telephonic transactions. Thus, the Supreme Court’s opinion does not change existing authorities that allow retailers to request addresses and phone numbers in order to deliver products to their customers. Nevertheless, it is important to recognize the bounds of the Supreme Court’s opinion. The reasoning behind the decision is that obtaining and recording personal identification information may be necessary to prevent fraud. To the extent retailers obtain and record such information for purposes other than preventing fraud or for a special purpose incidental but related to the credit card transaction, such as shipping, they still risk violating the law.

By: *Michael J. Burns*, *Eric R. McDonough* and *Daniel Hargis*

*Michael J. Burns* is a partner in Seyfarth’s San Francisco office. *Eric R. McDonough* is a partner and *Daniel Hargis* is an associate in Seyfarth’s Los Angeles – Century City office and are members of the office’s Consumer Class Action Defense practice group. If you would like further information, please contact Michael J. Burns at [mburns@seyfarth.com](mailto:mburns@seyfarth.com), (415) 732-1109; Eric R. McDonough at [emcdonough@seyfarth.com](mailto:emcdonough@seyfarth.com), (310) 201-5200, or Daniel Hargis at [dhargis@seyfarth.com](mailto:dhargis@seyfarth.com), (310) 201-1521.