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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 DUSTIN GORMLEY, *et al.*,

Consolidated Case No. C 11-893 SI

9 Plaintiffs,

**ORDER DENYING PLAINTIFFS’  
MOTION FOR LEAVE TO FILE A  
MOTION FOR RECONSIDERATION OF  
ORDER DENYING MOTION FOR  
CLASS CERTIFICATION**

10 v.

11 NIKE INC., *et al.*,

12 Defendants.  
13 \_\_\_\_\_/

14 Plaintiffs have filed a motion for leave to file a motion for reconsideration of the Order Denying  
15 Plaintiffs’ Motion for Class Certification. Plaintiffs contend that the California Supreme Court’s  
16 decision in *Apple Inc. v. Superior Court*, 2013 WL 406586 (Feb. 4, 2013), “is substantial evidence that  
17 the California Supreme Court would preserve its previous interpretation of the statute [in *Pineda v.*  
18 *Williams-Sonoma Stores, Inc.*, 51 Cal.4th 524, 527 (2011)] and ultimately hold that the judicially-  
19 created ‘consumer perception test’ applied by this Court in ruling on the Motion contradicts the clear  
20 language of the statute that would cause the broad and robust privacy protections afforded to consumers  
21 to be ‘relegated to the dust heap.’” Docket No. 111 at 1:21-25.

22 The Court has reviewed the *Apple* decision and finds that it does not provide a basis for  
23 reconsideration of the class certification order. *Apple* addressed the applicability of California Civil  
24 Code Section 1747.08 to downloadable products purchased online, and the Supreme Court did not  
25 consider the objective consumer perception standard which was applied by this Court (based upon  
26 California Court of Appeal case law) in the class certification order. Moreover, plaintiffs relied heavily  
27 on *Pineda* in the class certification briefing, and the order denying certification explained why the Court  
28 found plaintiffs’ reliance on *Pineda* misplaced. *See* Docket No. 108 at 9:16-21 (“Plaintiffs also rely on

1 the California Supreme Court’s statement in *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524,  
2 527 (2011), that ‘requesting and recording a cardholder’s ZIP code, without more, violates [the Song-  
3 Beverly Act].’ However, *Pineda* did not address whether the statute prohibits any ‘request’ for personal  
4 information in conjunction with a credit card payment. Instead, *Pineda* only decided the question of  
5 whether ZIP codes constituted ‘personal identification information’ within the meaning of the statute.”).

6 Accordingly, the Court concludes that the cases upon which this Court relied in the class  
7 certification order remain good law, and the Court DENIES plaintiffs’ motion. Docket No. 111.

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9 **IT IS SO ORDERED.**

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11 Dated: February 15, 2013



SUSAN ILLSTON  
United States District Judge

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