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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

REID YEOMAN, *ET AL.*

Plaintiffs,

v.

IKEA U.S.A. WEST, INC.,

Defendant.

Case No. 11-cv-00701-BAS(BGS)

ORDER:

- (1) GRANTING IN PART AND DENYING IN PART DEFENDANT’S MOTION FOR JUDGMENT ON PARTIAL FINDINGS FOR DEFENDANT PURSUANT TO RULE 52, OR, IN THE ALTERNATIVE, TO DECERTIFY THE CLASS (ECF NO. 261); AND**
- (2) SETTING HEARING ON DAMAGES PHASE AS TO PLAINTIFF MEDELLIN**

I. INTRODUCTION

On March 2, 2011, Plaintiff Reid Yeoman initiated this action by filing a Complaint in the Superior Court of California for the County of San Diego. The Complaint contained one claim for violations of the Song-Beverly Credit Card Act of 1971. On April 6, 2011, the matter was removed to this Court by Defendant Ikea U.S. West, Inc. (“Ikea”). On November 8, 2011, Plaintiff Yeoman filed a First Amended Class Action Complaint which added Plaintiff Rita Medellin (“Plaintiff”).

1 On January 13, 2012, Plaintiff filed a motion for class certification. The
2 motion was granted on May 4, 2012. Ikea subsequently moved to decertify the
3 class. On February 27, 2013, Ikea's motion to decertify was granted in part. The
4 class definition was modified to read:

5 The Class consists of all persons from whom Ikea requested and
6 recorded a ZIP Code in conjunction with a credit card transaction in
7 California from February 16, 2010 through February 28, 2011 (the
8 "Class"). Excluded from the Class are (i) transactions wherein
9 personal information was required for a special purpose incidental but
10 related to the individual credit card transaction, including, but not
11 limited to, information relating to shipping, delivery, servicing, or
12 installation of the purchased merchandise, or for special orders; (ii)
13 transactions wherein a credit card issued to a business was used; and
14 (iii) transactions executed at self-checkout kiosks. Also excluded
15 from the Class are the officers and directors of Defendant and of its
16 corporate parents, subsidiaries and affiliates, or any entity in which
17 Defendant has a controlling interest, and the legal representatives,
18 successors or assigns of any such excluded persons or entities, and the
19 Court to which the matter is assigned.

20 The parties agreed to a bench trial before this Court. On August 18, 2014, the
21 Court granted Ikea's motion *in limine* to bifurcate the liability phase on Plaintiff's
22 class action claim from the damages phase. The proceedings on the liability phase
23 took place on November 12-13, 2014. The Court heard and weighed the testimony
24 and evidence presented by Plaintiff. Following Plaintiff's presentation of evidence
25 in the liability phase of the trial, Ikea moved for judgment on partial findings
26 pursuant to Rule 52(c) of the Federal Rules of Civil Procedure, or, in the alternative,
27 to decertify the Class. The Court grants in part and denies in part Ikea's motion,
28 finding as follows:

24 **II. FINDINGS OF FACT**

25 **A. Rita Medellin**

26 1. On August 22, 2010, Plaintiff made two purchases from Ikea in San
27 Diego. She used her personal Visa credit card for both purchases.

28 2. After Plaintiff presented her credit card for payment, the cashier asked

1 for her ZIP code. Plaintiff believed the cashier needed the ZIP code for security
2 purposes because she was using a credit card. Therefore, she provided her ZIP code.
3 Plaintiff did not provide her ZIP code for purposes of shipping, delivery, special
4 order, or any other reason other than as a condition for using her credit card.

5 3. The cashier recorded Plaintiff's ZIP code in Ikea's transaction logs.

6 4. Other than the recorded ZIP code, Plaintiff remembers little else about
7 her visit to Ikea.

8 **B. The Class**

9 5. During the period from February 16, 2010 to February 28, 2011 (the
10 "Class Period"), Ikea operated eight stores in California. At these stores, Ikea
11 accepted credit cards, debit cards, gift cards, cash, and a store-branded credit card for
12 payment.

13 6. During the Class Period, at the direction of its Marketing Department,
14 Ikea instituted a process to capture customer ZIP codes from customers in California
15 at the time a customer paid for his or her item. These ZIP codes were recorded in
16 transaction logs that noted the date and amount of the transaction. The transaction
17 logs did not otherwise identify the purchaser. Although the method of payment was
18 noted in the transaction logs, the logs did not distinguish between signature debit
19 cards and credit cards. The logs also did not distinguish between corporate credit
20 cards and consumer credit cards. The logs did not identify whether the ZIP code
21 was also needed for another purpose such as arranging delivery of the merchandise.

22 7. The transaction logs also noted ZIP codes of customers who came
23 through the self-check kiosks. Customers who went through the self-check kiosks
24 were clearly notified that provision of a ZIP code was voluntary and not required to
25 complete a transaction. There was both a big button and a voice prompt that told
26 customers if they did not want to enter their ZIP codes, they could just press "no
27 thanks."

28 8. First Data was a company that processed Ikea's credit card purchases.

1 Ikea paid a different fee depending on whether the credit card purchase was a true
2 credit card purchase or was a signature debit card purchase. Thus, First Data sent
3 Ikea daily statements noting the number of credit card versus debit card purchases.
4 These statements also noted whether the credit card used was a commercial/business
5 credit card or was a consumer credit card. However, these statements from First
6 Data were only retained for six months, and any statements from the Class Period no
7 longer exist.

8 9. Cashiers at Ikea were told that customers were not required to give their
9 ZIP codes. Cashiers were instructed how to circumvent entry of a ZIP code (by
10 pushing “00000”). Cashiers who asked were told that Ikea was collecting ZIP codes
11 to decide where to locate another Ikea store.

12 10. Upon analyzing the ZIP codes in the transaction logs, Ikea’s Marketing
13 Department concluded the ZIP codes collected were highly unreliable: there was a
14 preponderance of ZIP codes such as “12345”, ZIP codes that matched the store’s
15 ZIP code, “90210” (the Beverly Hills TV show ZIP code), and ZIP codes that were
16 nonexistent. The Marketing Department’s analysis of the data showed a lack of
17 consistency among the stores and among the cashiers within the stores in collecting
18 the ZIP codes.

19 11. Kathleen Wallace, Ikea’s checkout services manager, testified that she
20 had been informed about the poor quality of the ZIP code collections, but that she
21 had never followed up with any of the cashiers, because there was more pressure to
22 move customers through the lines quickly than there was to collect ZIP codes.

23 12. When cashiers and cashier managers were trained, emphasis was placed
24 on providing the customer a good experience (which included getting them through
25 check-out quickly). Cashiers were given a goal of two minutes per customer.
26 Entering ZIP codes took away from this goal and was not a high priority, so cashiers
27 tended to ignore the procedure.

28 13. There were other legitimate reasons cashiers asked for ZIP codes: they

1 were required to verify the security of a card when they were keying in a credit card
2 number (because the swiping did not work); when home delivery or shipping was
3 arranged; when Ikea was providing a kitchen planning service, measuring service, or
4 installation or business design service; when customers applied for an Ikea credit
5 card or applied for a special warranty; or when a customer was returning a product.

6 14. Ikea did not store customers' names or credit card information together
7 with the ZIP code information, so there was no way Ikea could identify anyone who
8 had provided a ZIP code.

9 15. There was no evidence presented as to what any cashier ever said in
10 asking for a ZIP code other than what one cashier said to Plaintiff.

11 16. There is no way to tell from the transaction logs whether a customer
12 had gone through a self-check kiosk in the past, at which time the customer would
13 have been told clearly that provision of a ZIP code was voluntary.

14 17. There is no way to tell from the transaction logs which ZIP codes were
15 collected from a consumer credit card versus a signature debit card versus a
16 corporate credit card transaction.

17 18. There is no way to tell from the transaction logs whether the ZIP code
18 recorded by the cashier was the customer's actual ZIP code.

19 19. There is no way to tell from the transaction logs whether a customer
20 provided a ZIP code in order to obtain home delivery or shipping or some other
21 service from Ikea.

22 **III. CONCLUSIONS OF LAW**

23 20. The Song-Beverly Credit Card Act, California Civil Code §1747.08
24 (“the Act”) is a consumer protection statute, making it a violation for a business to
25 “[r]equest, or require, as a condition [of] accepting [a] credit card as payment...the
26 cardholder to provide personal identification information, which the [business]
27 causes to be written, or otherwise records...” Cal. Civ. Code § 1747.08(a)(2).

28 21. Under *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal.4th 524 (2011),

1 ZIP code information alone, even in the absence of a name, street address, phone
2 number, email address, or credit card number associated with it, is still “personal
3 identification information” under the Act. *Id.* at 527-28.

4 22. Plaintiff has submitted sufficient evidence to prove the Act was violated
5 with respect to her own individual claim.

6 23. Signature debit cards and corporate credit cards are not covered under
7 the Act and thus were excluded from the Class certified in this case.

8 24. Only an actual ZIP code collected from a customer that was truly the
9 customer’s ZIP code is covered under the Act.

10 25. The Act provides an exception for collection of personal identification
11 information “required for a special purpose incidental but related to the individual
12 credit card transaction, including, but not limited to, information relating to
13 shipping, delivery, servicing, or installation of the purchased merchandise, or for
14 special orders.” Cal. Civ. Code § 1747.08(c)(4).

15 26. The Act does not prevent a retailer from soliciting personal
16 identification information if provision of the information is clearly voluntary on
17 behalf of the customer. However, requesting but not explicitly conditioning the
18 provision of the personal identification information when a customer is paying by
19 credit card is not sufficient to avoid the Act’s prohibitions. The customer’s
20 perception is key. *Florez v. Linens ‘N Things, Inc.*, 108 Cal.App.4th 447, 451
21 (2003).

22 27. In *Gass v. Best Buy Co., Inc.*, 279 F.R.D. 561, 571-572 (2012), the
23 district court laid out a cogent continuum of business practices from those most
24 obviously violating the Act because a customer would have to perceive that
25 provision of personal identification information was required to complete the
26 purchase to those most obviously not violating the Act because a customer could not
27 possibly perceive that provision of personal identification information was required
28 to complete the transaction. In this case, for example, if the cashier said, “We’re

1 collecting ZIP codes to decide where to locate the next Ikea store. You don't have to
2 give us your ZIP code, but if you want, I'll enter your ZIP code to let them know
3 you want a store closer to your home," and the customer then provided a ZIP code,
4 this would not be in violation of the Act.

5 28. Other than her own transactions, Plaintiff has failed to prove that any
6 other violation of the Act occurred. Plaintiff has also failed to prove that an
7 ascertainable class of some number of similarly situated persons exists who were
8 also subjected to violations of the Act. Specifically, Plaintiff has failed to show that
9 any individual class member remains after eliminating on Ikea's transaction logs all
10 of the corporate credit cards, signature debit cards, people who provided a ZIP code
11 for home delivery or shipping or some other service or who applied for an Ikea
12 credit card or warranty, people who gave a false ZIP code, and people who were not
13 actually asked their ZIP code but the cashier recorded a false ZIP code.

14 29. Since there was no evidence of what happened during any other
15 transaction, the Court finds it equally, if not more, likely that the cashier explained
16 what he or she had been told, that the purpose of collecting the ZIP codes was to
17 decide where to put an Ikea store and that provision of a ZIP code was completely
18 voluntary on the part of the customer. In that situation, the customer's provision of a
19 ZIP code would clearly be voluntary and not in violation of the Act.

20 **IV. DECERTIFICATION OF CLASS**

21 In light Plaintiff's inability to demonstrate that anyone's rights other than
22 Plaintiff's rights were violated under the Act, the Court could conceivably enter
23 judgment in favor of Ikea on Plaintiff's class claim. However, given the clear lack
24 of available class-wide proof and common answers and the persistence of individual
25 questions, the Court finds the appropriate action is to decertify the Class prior to
26 entry of final judgment. Therefore, any individual putative class member who may
27 have a claim against Ikea under the Act may still pursue that claim.

28 ///

1 **A. Standard for Decertification**

2 “An order that grants or denies class certification may be altered or amended
3 before final judgment.” Fed. R. Civ. P. 23(c)(1)(C). Thus, “before entry of a final
4 judgment on the merits, a district court’s order respecting class status is not final or
5 irrevocable, but rather, it is inherently tentative.” *Officers For Justice v. Civil Serv.*
6 *Comm’n of the City & Cnty. of San Francisco*, 688 F.2d 615, 633 (9th Cir. 1982);
7 *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 n.11 (1978). The Ninth Circuit
8 has recognized that this rule “provides district courts with broad discretion to
9 determine whether a class should be certified, and to revisit that certification
10 throughout the legal proceedings before the court.” *Armstrong v. Davis*, 275 F.3d
11 849, 872 n.28 (9th Cir. 2011), abrogated on other grounds by *Johnson v. Cal.*, 543
12 U.S. 499, 504-05 (2005). Thus, “a district court retains the flexibility to address
13 problems with a certified class as they arise, including the ability to decertify. ‘Even
14 after a certification order is entered, the judge remains free to modify it in the light
15 of subsequent developments in the litigation.’” *United Steel, Paper & Forestry,*
16 *Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v.*
17 *ConocoPhillips Co.*, 593 F.3d 802, 809 (9th Cir. 2010) (citing *Gen. Tel. Co. of the*
18 *Sw. v. Falcon*, 457 U.S. 147, 160 (1982)). Indeed, “[a] district court may decertify a
19 class at any time.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir.
20 2009) (citing *Falcon*, 457 U.S. at 160).

21 In evaluating whether to decertify the class, the court applies the same
22 standard used in deciding whether to certify the class in the first place. *O’Connor v.*
23 *Boeing N. Am., Inc.*, 197 F.R.D. 404, 410 (C.D. Cal. 2000). Thus, a motion to
24 decertify a class is not governed by the standard applied to motions for
25 reconsideration, and does not depend on a showing of new law, new facts, or
26 procedural developments after the original decision. *Ballard v. Equifax Check Serv.,*
27 *Inc.*, 186 F.R.D. 589, 593 n.6 (E.D. Cal. 1999) (“Because the court has the power to
28 alter or amend the previous class certification order under Rule 23(c)(1), the court

1 need not consider whether ‘reconsideration’ is also warranted under Fed. R. Civ.P.
2 60(b) or [local rules governing reconsideration.]”); *Slaven v. BP Am., Inc.*, 190
3 F.R.D. 649, 652 (C.D. Cal. 2000) (“Because Defendants’ motion assists the Court in
4 performing its role as gatekeeper, or manager, of the class action, the motion should
5 not be denied on the ground that it impermissibly recounts old facts and law....”).

6 Indeed, “[u]nder Rule 23 the district court is charged with the duty of
7 monitoring its class decisions in light of the evidentiary development of the case.
8 The district judge must define, redefine, subclass, and decertify as appropriate in
9 response to the progression of the case from assertion to facts.” *Richardson v. Byrd*,
10 709 F.2d 1016, 1019 (5th Cir. 1983). And the court must decertify a class if the
11 requirements for class certification under Rule 23 are not met. *Gonzales v. Arrow*
12 *Financial Services LLC*, 489 F. Supp. 2d 1140, 1153 (S.D. Cal. 2007); *Slaven*, 190
13 F.R.D. at 651; *accord Boucher v. Syracuse Univ.*, 164 F.3d 113, 118 (2d Cir. 1999).

14 The United States Supreme Court requires district courts to engage in a
15 “rigorous analysis” to determine whether plaintiffs seeking class certification have
16 met each requirement of Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541,
17 2551 (2011). In many cases, “that ‘rigorous analysis’ will entail some overlap with
18 the merits of the plaintiff’s underlying claim. That cannot be helped.” *Id.* The
19 court’s “rigorous analysis” may require it “to probe behind the pleadings before
20 coming to rest on the certification question.” *Id.* at 2551 (citation and internal
21 quotations omitted). “[T]he merits of the class members’ substantive claims are
22 often highly relevant when determining whether to certify a class. More
23 importantly, it is not correct to say a district court *may* consider the merits to the
24 extent that they overlap with class certification issues; rather, a district court *must*
25 consider the merits if they overlap with the Rule 23(a) requirements.” *Ellis v.*
26 *Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011).

27 **B. Lack of Predominance and Superiority Warrants Decertification**

28 “[A]ny competently crafted class complaint literally raises common

1 ‘questions’....” *Dukes*, 131 S. Ct. at 2551 (citation omitted). What matters for
2 purposes of determining commonality and predominance is the presence of common
3 answers. *Id.* at 2551-52. Here, Plaintiff has not met this requirement. Plaintiff’s
4 evidence at trial has revealed that there is not a common answer to the essential,
5 threshold question of whether requests for ZIP codes were made to each customer,
6 for example.

7 As outlined above, Plaintiff has failed to prove the existence of a uniform
8 policy of requesting and recording ZIP codes that was uniformly applied or
9 followed. As a result, the predominance of common questions over individual
10 questions has not been shown. The single anecdote of Plaintiff’s own transaction
11 does not establish what occurred in other transactions. This failure of proof
12 undercuts the ground upon which certification of the class was initially granted and
13 decertification was denied. And without a common answer to the threshold question
14 of whether ZIP codes were uniformly requested and recorded, none of the other
15 issues is sufficiently important to convince the Court that the most efficient method
16 of determining the rights of the parties is the continuation of this action as a class
17 action. *See Amchem Products Inc. v. Windsor*, 521 U.S. 591, 615 (1997).

18 Furthermore, a class action is only superior “[w]here classwide litigation of
19 common issues will reduce litigation costs and promote greater efficiency.”
20 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Here, it will
21 not and has not. Even at the close of Plaintiff’s evidence, individual trials (or mini-
22 trials) are still needed to decide the fundamental question of whether requests for
23 personal identification information were in fact made to each absent class member
24 and the circumstances of any requests, and thus whether a violation of the Act
25 occurred. The absence of common proof to demonstrate these matters is fatal to
26 class treatment.

27 For these reasons, individual issues predominate and the continued
28 prosecution of this action as a class action is not superior to individual actions.

1 Without predominance of common questions and answers and superiority, this
2 action cannot continue as a class action and the Class is decertified. Fed. R. Civ. P.
3 23(b)(3) and 23(c)(1)(C).


4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court **GRANTS** Ikea's motion to decertify the
6 Class. As the Class has been decertified, Ikea's motion pursuant to Rule 52(c) of the
7 Federal Rules of Civil Procedure for judgment on partial findings as to the Class is
8 moot.

9 However, Ikea's Rule 52(c) motion is **DENIED** as to Plaintiff. Plaintiff has
10 established liability as to her transactions. Because the Court has found liability in
11 favor of Plaintiff on her individual claim, the Court declines Ikea's request to enter
12 costs in its favor. The Court hereby **SETS** the damages phase of the trial on
13 Plaintiff's individual claim for **January 27, 2015** at **9:30 a.m.** in **Courtroom 4B.**

14 **IT IS SO ORDERED.**

15
16 **DATED: December 4, 2014**


17 **Hon. Cynthia Bashant**
18 **United States District Judge**