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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## Ann Taylor Settles Customer Data Collection Row

By **Dan Packel**

Law360, New York (June 20, 2012, 2:08 PM ET) -- Ann Inc. has reached a settlement in a California federal proposed class action accusing the retailer of illegally collecting and storing ZIP codes from customers who used credit cards, agreeing to give each affected customer either a voucher for a \$15 discount on a purchase or a 20-percent-off coupon.

The proposed settlement, revealed in a filing in federal court in California on Monday, would put an end to the suit brought in December by Amelia Foos, which claimed that Ann Taylor violated California's Song-Beverly Credit Card Act of 1971 when it required customers paying with credit cards to hand over their ZIP codes in 2010 and 2011.

"Although both sides believe their respective positions in the action are meritorious, they have concluded that, due to the uncertainties and expense of protracted litigation, it is in the best interest of plaintiff, the putative settlement class, and Ann Taylor to resolve this action," said the attorney for Amelia Foos in the unopposed motion for preliminary approval of the settlement.

Foos bought items at a San Francisco Ann Taylor in November 2010 and was not allowed to complete her purchase with a credit card until she gave the store her full name and ZIP code, the suit alleged. Ann Taylor recorded and still stores Foos' personal data — including her name, ZIP code and credit card number — in its databases, she claimed.

Foos argued that by requesting the data at the time of her credit card purchase and storing it, Ann Taylor violated the Song-Beverly Act, which prevents corporations from collecting purchasers' personal information during credit card transactions.

Her suit followed a ruling on *Pineda v. Williams-Sonoma Stores Inc.* in February 2011 in which the California Supreme Court barred retailers from collecting ZIP codes from customers for marketing purposes, determining that the codes qualified as "personal identification information."

The settlement aims to certify all individuals who made a credit card purchase in California Ann Taylor stores and had their personal information recorded between September 2011 and Monday.

Class members — who will be informed by email or direct mail, along with notices posted online and published in USA Today — will be given the opportunity to select a voucher for either \$15 off a future purchase, with no minimum, or a 20 percent off coupon, according to the agreement.

The notice provided to the members of the class will also include instructions on how they can opt out of future marketing communications from Ann Taylor.

The settlement also includes the award of \$192,000 in fees to the plaintiff's attorneys and a \$1,000 incentive reward to Foos.

The deal marks another yet another settlement over the ZIP code allegations by a major retailer in California in the wake of the Pineda v. Williams-Sonoma Stores Inc. ruling.

In May, Crate & Barrel reached a settlement to end seven such proposed class actions, only a month after Lowe's HIW Inc. and Bed Bath & Beyond Inc. struck similar deals. In all of these cases, plaintiffs alleged the retailers improperly collected their ZIP codes when they made the credit card purchases.

Representatives for both Foos and Ann Taylor could not be reached for comment on Wednesday.

Foos is represented by Joseph Siprut, Todd C. Atkins, and Aleksandra Vold of Siprut PC.

Ann Taylor is represented by Michelle Doolin, Lindsay Parker and Darcie Tilly of Cooley LLP.

The case is Amelia Foos v. Ann Inc. et al., case number 3:11-cv-02794, in the U.S. District Court for the Southern District of California.

--Additional reporting by Erin Coe. Editing by Cara Salvatore.

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