

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<p>OLIVER RICH, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>WILLIAMS-SONOMA, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. _____</p> <p style="text-align: center;"><b>CLASS ACTION COMPLAINT</b></p> <p style="text-align: center;"><b><u>DEMAND FOR JURY TRIAL</u></b></p>
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Plaintiff Oliver Rich (“Plaintiff”), on behalf of himself and all others similarly situated, by and through his undersigned counsel, alleges the following based upon his own personal knowledge and the investigation of his counsel. Plaintiff believes substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a proposed class action against Williams-Sonoma, Inc. (“Defendant”) for its invasion of its Massachusetts customers’ privacy, in violation of Massachusetts state law.
2. During a period of time from April 15, 2009, to the conclusion of this action (the “Class Period”), as a prerequisite to the completion of its customers’ credit or debit card transactions, Defendant collected and recorded the customers’ ZIP codes.
3. The ZIP codes Defendant obtained in the manner described above and herein are personal identification information, as defined under Massachusetts state law. Further, Defendant can use its customers’ ZIP codes and names to obtain the customers’ addresses and/or telephone numbers via commercially available databases.
4. Unfortunately for consumers, the credit card processing companies do not require

Defendant to obtain ZIP codes as a prerequisite to completion of its customers' credit card transactions.

5. Further, Defendant did not collect and record its customers' ZIP codes for verification purposes.

6. Rather, Defendant collected and recorded its customers' personal identification information for purposes related to marketing and advertising its business, such as sending junk mail advertisements directly to consumers' homes without permission.

7. Defendant's customers who have provided it with their personal identification information also run the risk that Defendant will sell or otherwise provide that personal identification information to third parties without the customers' knowledge or consent.

8. Defendant's collection and recording of its customers' personal identification information as a prerequisite to completion of the customers' credit card transactions, when the credit card processing companies do not require the information to complete the transactions, violates the Massachusetts common law prohibition on unjust enrichment. Plaintiff brings this action to stop Defendant's unlawful practice.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over all causes of action asserted herein, pursuant to 28 U.S.C. § 1332(d), because the aggregate claims of the members of the proposed Class (as defined herein) exceed the sum or value of \$5,000,000.00, and there is diversity of citizenship between proposed Class members and Defendant.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) and (2). Substantial acts in furtherance of the alleged improper conduct, including the collection and recording of consumers' personal identification information as a prerequisite to completion of

their credit card transactions, occurred within this District.

### **PARTIES**

11. Plaintiff Oliver Rich is a resident of Hatfield, Massachusetts. During the Class Period, as a prerequisite to completion of credit card transactions in Defendant's stores, Mr. Rich provided Defendant with his ZIP code, which Defendant recorded. Mr. Rich was not aware that the credit card companies did not actually require his ZIP code to complete processing of his credit card transactions with Defendant. Subsequently, Defendant sent Mr. Rich unwanted advertising and marketing materials.

12. Defendant Williams-Sonoma, Inc., is a corporation incorporated under the laws of the State of Delaware, with principal executive offices at 3250 Van Ness Avenue, San Francisco, California 94109.

### **SUBSTANTIVE ALLEGATIONS**

13. As a prerequisite to completion of credit or debit card transactions at its retail stores, Defendant requires its customers to provide it with their ZIP code information.

14. Defendant records the ZIP code information so obtained in the electronic credit card transaction form, or an attachment thereto, in connection with completing its customers' transactions.

15. The ZIP codes Defendant obtained in this manner are "personal identification information," as defined under Massachusetts state law. Specifically, the Massachusetts Supreme Judicial Court has held that a consumer's ZIP code is "personal identification information" within the meaning of Massachusetts General Laws, Chapter 93, § 105(a), stating as follows:

[A] consumer's zip code, when combined with the consumer's name, provides the merchant with enough information to identify through publicly available

databases the consumer's address or telephone number, the very information § 105(a) expressly identifies as personal identification information. In other words, to conclude in those circumstances that zip codes are not "personal identification information" under the statute would render hollow the statute's explicit prohibition on the collection of customer addresses and telephone numbers, and undermine the statutory purpose of consumer protection.

*See Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 500 (2013).

16. Further, Defendant can use its customers' ZIP codes and names to obtain the customers' addresses and/or telephone numbers via commercially available databases.

17. Unfortunately for consumers, the credit card processing companies do not require Defendant to obtain ZIP codes as a prerequisite to completion of its customers' credit card transactions.

18. Further, Defendant did not collect and record its customers' ZIP codes for verification purposes.

19. Rather, Defendant collected and recorded its customers' personal identification information for purposes related to marketing and advertising its business, such as sending junk mail advertisements directly to consumers' homes without permission.

20. Defendant's customers who have provided it with their personal identification information also run the risk that Defendant will sell or otherwise provide that personal identification information to third parties without the customers' knowledge or consent. Defendant could potentially also use the ZIP codes to determine where to open new stores and/or where to target advertising.

21. Defendant's collection of Plaintiff's and the Class members' ZIP codes injured Plaintiff and the Class members because Defendant used the ZIP codes to identify their mailing addresses and send them unwanted advertising and marketing materials.

22. Equity and good conscience require Defendant to return the profits it unjustly

obtained by (i) misleading Plaintiff and the Class members as to whether their ZIP code information was necessary to complete their credit card transactions, (ii) recording the ZIP codes obtained as a result of the misleading conduct on the electronic credit card transaction form, (iii) sending unwanted advertising and marketing materials to Plaintiff and the Class members via use of the ZIP codes to obtain their addresses and/or telephone numbers, and/or (iv) selling or otherwise providing that personal identification information to third parties without Plaintiff's or other Class members' knowledge or consent.

23. Defendant's collection and recording of its customers' personal identification information as a prerequisite to completion of the customers' credit card transactions, when the credit card processing companies do not require the information to complete the transactions, violates the Massachusetts common law prohibition on unjust enrichment. Plaintiff brings this action to stop Defendant's unlawful practice.

### **CLASS ALLEGATIONS**

24. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons whose ZIP code was collected and recorded by Defendant in Massachusetts when such persons made a purchase using a credit or debit card from April 15, 2009 to the present. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, or assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

25. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

26. At this time, Plaintiff does not know the exact number of the Class members; however, given the nature of the claims and the number of Defendant's retail stores in

Massachusetts, Plaintiff believes the Class members are so numerous that joinder of all members is impracticable.

27. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include but are not limited to:

- a. Whether, as a prerequisite to completion of Plaintiff and the Class members' credit or debit card transactions with Defendant, Defendant collected and recorded Plaintiff's and the Class members' ZIP codes, when the credit card processing companies did not require the ZIP codes so obtained to complete the transactions; and
- b. Whether Defendant has been unjustly enriched, including but not limited to by selling to third parties Plaintiff's personal identification information obtained in connection with Defendant's conduct alleged herein.

28. Plaintiff's claims are typical of those of the Class members because Plaintiff and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein.

29. Plaintiff will adequately protect the interests of the Class members. Plaintiff has retained counsel that are experienced in litigating complex class actions. Neither Plaintiff nor his counsel have any interests adverse to those of the other Class members.

30. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for purposes of judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action

will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

31. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

32. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interests of all members of the Class, although certain Class members are not parties to such actions.

33. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

**CAUSE OF ACTION**  
**(Unjust Enrichment)**

34. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

35. Defendant misleadingly collected and recorded Plaintiff's and the Class members' ZIP codes as a prerequisite to completion of their credit or debit card transactions with Defendant, when, in fact, the credit card processing companies did not require Plaintiff's and the Class members' ZIP codes to complete the credit or debit card transactions.

36. Defendant was enriched at the expense of Plaintiff and the other Class members as a result of its misleading acquisition of their economically valuable personal identification

information, which Defendant used for its own profit, while providing Plaintiff and the Class members nothing in return.

37. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits it received from Plaintiff and the Class members, in light of the fact that Defendant misled Plaintiff and the Class members to believe their ZIP codes were necessary to complete their credit or debit card transactions with Defendant, when in fact their ZIP codes were not necessary to complete the transactions. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiff and the other Class members of the monetary benefits of their personal identification information, in an amount to be determined at trial.

38. Therefore, Plaintiff prays for relief as set forth below.

**PRAYER FOR RELIEF**

THEREFORE, Plaintiff demands judgment as follows:

A. For an order certifying the proposed Class herein under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3); appointing Plaintiff as representative of the Class; and appointing his undersigned counsel as Class counsel;

B. For a declaration that Defendant is financially responsible for notifying the Class members of the pendency of this action;

C. For declaratory and injunctive relief;

D. For equitable monetary relief in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;

E. For an Order awarding Plaintiff and the Class members the reasonable costs and

expenses of suit, including their attorneys' fees;

F. For such further relief as the Court deems just and appropriate.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury on all claims so triable.

DATED: April 15, 2013

Respectfully submitted,

**WHATLEY KALLAS, LLC**

/s/ Patrick J. Sheehan

Patrick J. Sheehan (BBO #639320)

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**REESE RICHMAN LLP**

Kim E. Richman (*pro hac vice* application to be filed)

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*Counsel for Plaintiff and the Proposed Class*

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 OLIVER RICH, on behalf of himself and all others similarly situated

**(b) County of Residence of First Listed Plaintiff** Hampshire County, MA  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
 Patrick J. Sheehan, Whatley Kallas, LLC, 60 State Street, Seventh Floor,  
 Boston, Massachusetts 02109  
 Tel.: (617) 573-5118, psheehan@whatleykallas.com

**DEFENDANTS**  
 WILLIAMS-SONOMA, INC.

County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)**

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT (Place an "X" in One Box Only)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN (Place an "X" in One Box Only)**

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (Specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332

Brief description of cause:  
Unjust enrichment by misleadingly obtaining ZIP codes in connection with credit card transactions

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ 5,000,000.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER 1:13-cv-10931

DATE 4/15/13    SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY    RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Rich v. Williams-Sonoma, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Brenner v. Williams-Sonoma, Inc., No. 1:13-cv-10931

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Patrick J. Sheehan

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