# Consumer Lending Update

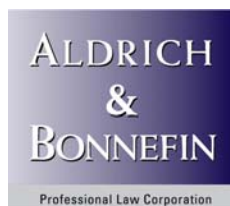
**SEPTEMBER 2018**

## CALIFORNIA SUPREME COURT: CONSUMER LOAN INTEREST RATES MAY BE UNCONSCIONABLE

California Financial Code (FC) Section 22303 governs the maximum rate of interest that California Financing Law (CFL) licensees may charge on consumer loans having a *bona fide* principal amount of less than $2,500 (for purposes of this article, "usury limit"). Section 22303 expressly excludes consumer loans of $2,500 or more from this usury limitation. No similar provision exists elsewhere in the FC that limits the rate of interest on such larger loans. Nonetheless, the California Supreme Court recently held that interest rates charged on these larger loan amounts may be challenged as being "unconscionable." *De La Torre et al. v. Cashcall, Inc.*, 5 Cal. 5th 966 (Cal. 2018).

The subject of this litigation was two unsecured $2,600 loans (just over the usury limit's threshold), payable over 42 months with APRs of 96 percent and 135 percent, respectively. In 2014, the two consumers on these loans brought a class action lawsuit against Cashcall alleging that the interest rates violated California's Unfair Competition Law (UCL). Under the UCL unfair competition means any unlawful, unfair or fraudulent business act or practice. California Business & Professions (B&P) Code Section 17200. The borrowers did not allege that Cashcall deceptively advertised or failed to accurately disclose the loan terms. Rather, they alleged that the interest rates were so high as to be unconscionable, in violation of a rarely utilized provision of the CFL, FC Section 22302. Section 22302 provides that loans found unconscionable under California Civil Code Section 1670.5 are deemed to be in violation of the CFL. Under Section 1670.5, if a court finds any part of the contract to be unconscionable, the court may refuse to enforce all or part of that contract. Generally, unconscionable means extreme unfairness.

Initially, the federal district court for the Northern District of California granted Cashcall's motion for summary judgment. The court held that the UCL cannot serve as a basis for an unconscionability claim because it would impermissibly require the court to regulate economic policy in an area where the legislature has declined to do so. However, the Ninth Circuit took the case on appeal and certified the following question to the California Supreme Court: "Can the interest rate on consumer loans of $2,500 or more governed by FC Section 22303 render the loans unconscionable under FC Section 22302?" The court did not rule on whether Cashcall's interest rates were unconscionable, only whether they could be so.

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The California Supreme Court held that FC Section 22302 expressly provides that unconscionability applies to the interest rates on consumer loans exceeding $2,500. Because Section 22302 referred to the statutory codification of the unconscionability doctrine (in Cal. Civ. Code 1670.5), the high court concluded that "a court may find any contract or any clause of the contract unconscionable and refuse its enforcement." As such, the unconscionability doctrine applies to the terms of a loan contract, "one of which is undeniably the interest rate on the loan." Further, B&P Code Section 17200 treats "violations of other laws" as unlawful practices that are independently actionable. The court held that a violation of FC Section 22302 (unconscionability) satisfies B&P Code Section 17200's "violations of other laws" requirement. Therefore, the plaintiffs had a valid independently actionable claim under B&P Code Section 17200 for the violation of FC Section 22302. After receiving the California Supreme Court's decision, the Ninth Circuit remanded the case to the lower court to determine whether Cashcall's interest rates were unconscionable.

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