



## UNCONSCIONABLE INTEREST UNDER CALIFORNIA LAW

The Supreme Court of California, in response to a question from the U.S. Court of Appeals for the Ninth Circuit, held an interest rate on consumer loans of \$2,500 or more may be deemed unconscionable under Financial Code Section 22302. *De La Torre v. CashCall, Inc.*, Case No. S241434 (Cal. August 13, 2018). The Ninth Circuit certified to the California court the question: "Can the interest rate on consumer loans of \$2500 or more governed by California Finance Code § 22303, render the loans unconscionable under California Finance Code § 22302?" *De La Torre v. CashCall, Inc.*, 854 F.3d 1082 (9th Cir. 2017). The court noted that California law sets interest rate caps only on consumer loans less than \$2,500.

The question arose in the context of a lawsuit against a lender in federal court. The plaintiffs alleged that the lender violated California's Unfair Competition Law that defines "unfair competition" to include "any unlawful, unfair or fraudulent business act or practice." Plaintiffs asserted that the lender's lending practice was unlawful because it violated Section 22302, the section that applies the unconscionability doctrine to consumer loans. The lender responded that the California legislature had chosen not to regulate the interest rate on loan over \$2,500 and, therefore, the interest rate could not be deemed unconscionable.

The California court rejected the lender's position and concluded that the interest rate on consumer loans of \$2,500 or more may render the loans unconscionable under Section 22302 of the Financial Code. The court explained that the Ninth Circuit did not ask the court to decide whether the lender's loans were unconscionable, and the court was not resolving that question. The court held only that California law permits such a finding, as long as the requirements of unconscionability are satisfied. The California court recognized that unsecured loans made to high-risk borrowers often justify high rates and stated a court declares unconscionable only those interest rates that, in light of the totality of a transaction's bargaining context, are so "unreasonably and unexpectedly harsh" as to be "unduly oppressive" or "shock the conscience."

The case is a reminder to lenders and others to keep the unconscionability doctrine, whether a part of state law by statute or common law, in mind when reviewing applicable law and setting up

lending programs. □

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