Case No. A169205

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

EDUARDO DE LA TORRE,

Plaintiff and Respondent,

v.

CASHCALL, INC.,

Defendant and Appellant

Appeal from the Judgment of the San Mateo County Superior Court
Case No. 19-CIV-01235
Hon. Marie S. Weiner, Presiding

Amicus Curiae Brief In Support of Respondent Eduardo de la Torre

(Application For Permission To File Amicus Curiae Brief Included)
Rule 8.200(c) of the California Rules of Court

Public Good Law Center

National Association of Consumer Advocates

Center For Responsible Lending

BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
Robert M. Bramson (SBN 102006)
2125 Oak Grove Road
Suite 210
Walnut Creek, CA 94598
(925) 945-0200
rbramson@bramsonplutzik.com

Attorneys for *Amici*

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF; INTEREST OF *AMICI*[1]

*Amicus curia*e Public Good Law Center is a public interest organization dedicated to fairness and justice in the courts and in the marketplace. Through cases of particular significance for the protection of consumers—especially low-income consumers—Public Good seeks to ensure that legal protections and the system of justice remain available to everyone. Public Good has participated in consumer protection cases around the state and the nation, including numerous matters before this Court, the California Supreme Court and the United States Supreme Court, where, as here, consumers' fundamental rights and financial well-being are at stake.

Amicus curiae National Association of Consumer Advocates is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, and law professors and students whose primary practice or area of study involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and to serve as a voice for its members and consumers in the ongoing struggle to curb unfair and oppressive business practices.

---

[1] Pursuant to Rule of Court 8.200(c)(3), counsel for *amici* states that no party or counsel for a party authored this brief in whole or in part and that no person other than *amici* made any monetary contribution to the brief's preparation or submission.

Amicus curiae The Center for Responsible Lending is a non-profit organization dedicated to eliminating abusive practices in the market for consumer financial services and to ensuring that consumers benefit from the full range of consumer protection laws designed to prohibit unfair and deceptive practices by financial services providers. CRL is an affiliate of Self-Help, a nonprofit based in North Carolina, with retail credit union branches in North Carolina, California, Florida, Georgia, Illinois, Virginia, Wisconsin, and Washington.

Amici seek to participate in this proceeding for the purpose of presenting their perspective on the legal standards, goals and requirements for awards of restitution in cases brought under California's Unfair Competition Law (Bus. & Prof. Code §§17200 *et seq.*). In particular, *amici* oppose the request by CashCall in this appeal to impose a narrow restriction on the available measures for such restitution which would severely limit trial court discretion in this area and effectively eliminate the deterrence value of such awards.

For the foregoing reasons, *amici* respectfully request that the Court accept the following brief for filing.

Respectfully submitted,

Dated: June 23, 2025

BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP

Robert M. Bramson
Attorneys for Amici

Case No. A169205

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

EDUARDO DE LA TORRE,

Plaintiff and Respondent,

v.

CASHCALL, INC.,

Defendant and Appellant

Appeal from the Judgment of the San Mateo County Superior Court
Case No. 19-CIV-01235
Hon. Marie S. Weiner, Presiding

Amicus Curiae Brief In Support of Respondent Eduardo de la Torre

Rule 8.200(c) of the California Rules of Court

Public Good Law Center

National Association of Consumer Advocates

Center For Responsible Lending

BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
Robert M. Bramson (SBN 102006)
2125 Oak Grove Road
Suite 210
Walnut Creek, CA 94598
(925) 945-0200
rbramson@bramsonplutzik.com

Attorneys for *Amici*

TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION AND SUMMARY OF ARGUMENT

In this appeal, appellant CashCall seeks to overturn a trial court's order requiring it to return $245,000,000 to borrowers that it unlawfully took from borrowers through its unconscionable loans. *Amici* believe that the grounds which CashCall asserts for this reversal are legally defective and, if adopted, would do grave damage to the Legislative and public policy goals served by the Unfair Competition Law (UCL).

CashCall argues that the trial court abused its discretion in awarding restitution because, in CashCall's view, there is only one permissible way for trial courts to decide upon the appropriate amount of restitution to award for any violation of the UCL: the "difference between what the plaintiff paid and the value of what the plaintiff received." This is the measure adopted in two UCL deceptive advertising cases: *In re Tobacco Cases II* (2015) 240 Cal.App.4th 779 ("*Tobacco II*"), upon which CashCall heavily relies, and *In re Vioxx Class Cases* (2009) 180 Cal.App.4th 116 ("*Vioxx*").

Leaving aside the obvious point that neither of these cases holds that that is the *only* permissible measure in UCL cases (indeed, each case says the opposite), CashCall's position – if adopted – would severely restrict the scope of trial court discretion when rendering UCL awards. CashCall seeks to extend the Fourth

District's decision in *Tobacco II* far beyond its context and intent. Particularly in the context of this *unlawful* prong UCL case, this Court should decline CashCall's invitation to adopt a severe restriction on trial court discretion in this critical area.

THE TRIAL COURT'S RULING

This class action was tried to the court below on plaintiff's claim that certain of CashCall's consumer loans to California residents violated the "unlawful" prong of the UCL. The basis of that claim was that the CashCall loans in question violated Financial Code §22302(a), which – via incorporation of Civil Code §1670.5 – prohibits unconscionable loans covered by the Financial Code. CashCall extended loans of approximately $2,600 to California borrowers ("$2,600 loans") at very high interest rates, seeking to take advantage of a hole in California's rate regulation regime which did not (at that time) include any set interest rate cap on loans over $2,500. However, as our Supreme Court ruled, those loans remained subject to unconscionability analysis. *De La Torre v. CashCall Inc*. (2018) 5 Cal.5th 966, 1010. Significantly, CashCall *refused* to allow consumers to borrow less than $2,600 even if they asked to do so – a point emphasized by the trial court. (AA4:2580-2584 [Amended Final Statement of Decision at 13-17].)

At the conclusion of trial, the court found that the $2,600 loans were indeed unconscionable, thus violating Financial Code §22302(a), and therefore that

CashCall had engaged in an "unlawful" business practice prohibited by the UCL. As part of its analysis, the court reviewed the evidence regarding any "benefits" to the borrowers from these loans, noting the overly harsh terms for repayment and that "a lender is not doing a favor to a borrower to give a loan that they cannot afford to pay." (AA4:2591; see AA4:2591-2594 [Amended Final Statement of Decision at 24; see pp. 24-27].)

The court granted both forms of relief authorized for violations of the UCL. First, as to injunctive relief, the court enjoined the future collection of interest attributable to those loans, while permitting ongoing collection of unpaid principal. Second, as to restitution, the court concluded that the appropriate amount under the circumstances based upon the calculations and testimony of plaintiff's expert witness, was $245,515,389. In the court's words, that amount "reflects the return (restitution) of all interest paid by those Class members who have paid to Defendant more than the amount of their principal on their 101,564 loans, and minus the $75 origination fee charged by Defendant (which is not illegal). No monetary restitution is awarded on the 32,284 loans to those Class members who have paid to Defendant less than the amount of the principal of their loans." (AA4:2570 [*Id.* at 3].)

The court denied plaintiff's request for prejudgment interest on this restitution amount, despite the fact that CashCall's collection of interest on these

loans dated back to 2005. Thus, even after paying full restitution, CashCall will have benefited greatly from its collection of interest on these loans, since it will retain all returns earned on those sums in the 10 - 20 year interim. Concomitantly, those class members receiving the restitution payments will remain partially uncompensated due to the loss of use of those funds for many years.

ARGUMENT

I. THE PARAMETERS AND PURPOSES OF UCL RESTITUTION

The remedies section of the UCL provides that, in the case of a business practice violating the Act:

> The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Bus. & Prof. Code §17203.

This provision (along with the parallel provision under the False Advertising Law, Bus. & Prof. Code §17535) has been uniformly construed to grant broad discretion to the trial court to fashion relief, both injunctive and restitutionary, as may be appropriate under the circumstances to accomplish complete relief. "'[T]he court's discretion is very broad' and … this language 'is … a grant of broad equitable power.' [Citation.] … 'The remedial power granted under these sections

is extraordinarily broad." *People v. Overstock.Com, Inc*. (2017) 12 Cal.App.5th 1064, 1091 (quoting *People v. JTH Tax, Inc*. (2013) 212 Cal.App.4th 1219, 1257); *see also*, *Nationwide Biweekly Admin., Inc. v. Superior Court* (2020) 9 Cal.5th 279, 308; *Cortez v. Purolator Air Filtration Prods. Co*. (2000) 23 Cal.4th 163, 180 (§17203 represents "a grant of broad equitable power"); *Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442, 452 ("the basic equitable principles underlying section 17535 arm the trial court with broad discretionary power … '… to accomplish complete justice between the parties'").

The only limit on that discretion articulated by the California Supreme Court is that monetary relief granted under the UCL must be true "restitution": the return of funds which once were possessed by the victims of the challenged business practice or to which they were legally entitled. *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 371; *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 336. Compensatory damages are not recoverable as UCL restitution. *Pineda v. Bank of America, N.A*. (2010) 50 Cal.4th 1389, 1402, n.14. In addition, some appellate courts have required that a restitution award represent a concrete, measurable amount supported by admissible evidence. *Colgan v. Leatherman Tool Grp., Inc*. (2006) 135 Cal.App.4th 663, 700. *Amici* do not understand CashCall to contend that the UCL award in this case failed to meet either of these requirements. Nor could it: The amounts the trial court ordered CashCall to pay to borrowers

represent the amounts of interest previously paid by the borrowers to CashCall. Obviously, this is true restitution. And the amount of the restitution award was based squarely on expert testimony as to the precise amounts in question. (AA4:2605-06; RT10:2108:5-2115:10; AA6:3597.)

In authorizing the remedies of injunction and restitution under the UCL, the Legislature sought to serve multiple public policy goals: to stop ongoing unfair business practices, to restore to consumers amounts paid in connection with those practices and to deter future violations. *Cortez, supra*, 23 Cal.4th at 176 ("Section 17203 authorizes the court to fashion remedies to prevent, deter, and compensate for unfair business practices."). *See also, Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1148, 131 ("deterrence of unfair practices" is "an important goal" of UCL restitution but not its "sole objective").

Deterrence is thus one key consideration when a trial court decides upon the scope of a UCL restitution order. Indeed, the importance of deterrence justifies an award of UCL restitution, in the trial court's discretion, even in the absence of proof of injury as to some recipients. "[T]he Legislature considered UCL deterrence 'so important that it authorized courts to order restitution without individualized proof of deception, reliance, and injury." *People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1548 (quoting *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1267).

II. THIS COURT SHOULD REJECT CASHCALL'S CONTENTION THAT THE RESTITUTION ORDER IN THIS CASE EXCEEDED PERMISSIBLE BOUNDS

CashCall argues that the trial court's restitution order should be vacated because it was calculated in a way other than the one, very narrow measure which CashCall asserts is the only calculation allowed under the UCL. This Court should reject that argument.

Preliminarily, though CashCall speculates that there might be some other permissible methods for calculating restitution beyond the "difference between what the plaintiff paid and the value of what the plaintiff received" (hereinafter, the "difference measure"), it does not identify any such possibilities or measures for this case or any other UCL case. (AOB 51, 58.) The absence of any such examples is unsurprising. As explained below, if *this* case is not an example of one in which the "difference measure" is not mandated, it is difficult to conceive of any such case.[2]

A. A Rule Mandating That All UCL Restitution Awards Be Calculated Using One and Only One Methodology Is Inconsistent With The

[2] CashCall suggests that this Court need not be concerned about the availability of other potential measures of restitution because plaintiff "did not identify one or attempt to prove entitlement to it." AOB at 58. But plaintiff *did* identify another measure and proved the amount due under that measure: the measure adopted by the trial court. (Answer Brief at 47.) CashCall's argument is thus revealed for what it is: the unsupported view that there is one and only one legally permissible restitution measure.

Supreme Court's Frequent Statements That Trial Courts Have Broad Discretion In Granting Such Relief

As noted above, case law makes clear that trial courts have broad discretion (some cases say "extraordinarily broad" discretion) when deciding upon UCL remedies, including restitution, to accomplish complete justice given the particular circumstances of the cases before them. CashCall's contention that there is only one permissible way for judges to calculate UCL restitution is flatly inconsistent with that discretion. Although it is true that trial courts would still have "discretion" to decline to order any restitution at all even under CashCall's proposed rule, a binary choice between making no award at all and making an award calculated pursuant to a single, predetermined formula hardly qualifies as "broad discretion" under the ordinary meaning of those words.

Unquestionably, the "difference measure" is *a* permissible approach to determining an appropriate restitution amount, at least in deceptive advertising UCL cases. But in any given case, that measure may or may not yield a just and equitable result. A multitude of factors may impact a trial court's determination regarding restitution. Was the conduct at issue prohibited by another statute when it was engaged in or was it merely determined after the fact to be "unfair" as meant by the UCL? Were the violations of law intentional, inadvertent or negligent? Was the unlawful practice widespread and long-standing or more circumscribed? What is the likelihood of recurrence? What was the relative culpability (if any)

between the defendant and its customers/victims? Was some or all of the monetary harm easily avoided by one or the other of the parties? Under CashCall's view, none of these questions can make any difference – the trial court can make only one decision: restitution as specified by its proposed "difference measure" or nothing.

Beyond these questions – or related to them – trial courts must decide the amount of money that "**may have been** acquired by means of such unfair competition" (§17203, emphasis added). The test of the statute reads "may have been acquired" not "proven to have been acquired" or "only such amount as is shown to have been acquired." This statutorily-mandated assessment of possibility or probability is, by its very nature, inconsistent with *any* rigid formula and certainly not the inflexible calculation proposed by CashCall. Instead, a trial court must make its restitution decision based upon and tailored to the particular circumstances of the record before it.

B. CashCall's Approach Is Inconsistent With The Value Of Deterrence Flowing From UCL Restitution Awards

Deterring future bad conduct is an "important goal", though not the only goal, of UCL restitution awards. *Korea Supply Co*., *supra*, 29 Cal.4th at 1148. CashCall's approach to restitution measurement would essentially strip this goal from the statute.

By insisting on the "difference measure" as the sole possible calculation, CashCall would in effect limit all UCL restitution awards to an amount akin to the victims' actual damages from a wrongful business practice. While, again, a trial court could properly find that that measure is sufficient to deter future misconduct in some cases, there are other circumstances where that measure would *not* be sufficient to deter. Indeed, this case is one of them.

The restitution amount that CashCall argues for here would result in CashCall retaining "a non-unconscionable rate of interest" on the loans that it made to class members. (AOB at 53.) In other words, CashCall would end up being paid for its loans at the fair market rate. Such an award in this case would not only have zero deterrence value -it would have *negative* deterrence value. Another business in CashCall's position (or possibly CashCall again), presented with a new opportunity to extend unlawful loans at unconscionable rates, would understandably weigh the potential benefits of doing so against the potential risk of an adverse judgment against it for the unfair practices. The potential benefits would be huge profits from the collection of interest payments at very high rates; the potential risk, even assuming an adverse judgment after many years of delay, would merely be putting the company back into the position of retaining the fair

amount of interest of the loans, the same result as if it had followed the law in the first place.[3] That is a very appealing prospect for an unscrupulous company.

Moreover, in considering the importance of deterring future violations in any particular case, a trial court properly assesses the extent of harm (*both* monetary and non-monetary) from the business practice at issue. While UCL restitution must be limited to restoring amounts taken from the defendant's customers/borrowers, within that restriction there still may be a range of possible, permissible awards. The selection of a particular figure from that range falls within a trial court's reasoned discretion based upon all relevant factors, including the likely impact on future consumers should the defendant or any other business repeat the wrongful practices. In this case, the trial court made extensive findings regarding the harms flowing from the unconscionable loans extended by CashCall. These harms included damage to the borrowers' credit ratings, with all of the financial difficulties and emotional harms which flow from that damage. (AA4:2591-2594 [Amended Final Statement of Decision at 24-27].)

---

[3] Actually, our hypothetical company – like CashCall here – would be left in substantially *better* position than had it obeyed the law when the loans were extended. Since lawsuits tend to be lengthy affairs, companies can profit from use of borrowers' payments while litigation pends. Ultimate restitution of all "excess" payments would not deprive the company of the benefit of that use for however many years the litigation took to reach completion.

CashCall does not directly confront the objection that its proposed exclusive measure of restitution would preclude any consideration of the importance of deterrence under the UCL. Instead, it seeks refuge in the Court of Appeal decision in *Tobacco II*, in which the court ruled that plaintiffs' proposal for a restitution amount (in that case, a full refund) *in the absence of any evidence of consumer harm* could not be justified solely on the basis of deterrence.

But CashCall ignores several important distinctions between Tobacco II and this case. The court of appeal in *Tobacco II* stated:

> We conclude that as a matter of law, restitution is not available here for the exclusive purpose of deterrence. Under plaintiffs' theory, a full refund would be available on any product, even costly items such as cars, yachts, and planes, based on UCL violations that had little or no impact on value. That, of course, is not the law. "Section 17203 makes injunctive relief 'the primary form of relief available under the UCL,' while restitution is merely 'ancillary.'" (Clayworth v. Pfizer, Inc. (2010) 49 Cal.4th 758, 790.) Without any showing of loss to plaintiffs, there can be no restoration of money "which may have been acquired *by means of such unfair competition*." (§ 17203, italics added.)

240 Cal.App.4th at 801-802. For several reasons, the result here should be different.

First, and most importantly, the *Tobacco II* court found that the trial court's justified rejection of plaintiffs' expert's testimony in that case meant that the record contained *no evidence of any loss at all* to the plaintiffs from the challenged advertising. The court explicitly based its decision on that absence. "Without any

showing of loss to plaintiffs, there can be no restoration of money 'which may have been acquired by means of such unfair competition.' (§17203, italics added.)" *Id*. at 802. It was only under that circumstance, i.e. no admissible evidence of any loss, that the court found the question to be whether deterrence *alone* could justify a restitution award.[4]

No comparable situation exists here. The trial court in this case found that the loans at issue were extended at unconscionably high interest rates, i.e. rates exceeding a fair level. The designated recipients of the restitution award are those borrowers who made interest payments at those high rates beyond repayment of loan principal. By definition, then, each of those borrowers suffered some amount of "harm from those overcharges. CashCall can debate the *degree* of harm, but it is impossible to deny the existence of harm.

Thus, even accepting *arguendo* the remaining portions of the *Tobacco II* decision, the correct analysis here is whether the combination of proven loss and deterrence value supports the trial court's discretion in setting the award of restitution. The *Tobacco II* court's decision that deterrence *alone* did not suffice has no relevance here. The fact that the plaintiffs in that case sought a "full

---

[4] The court described plaintiffs' "alternative argument" as asserting that "the [trial] court had discretion to order Philip Morris to make a full refund of their expenditures on Marlboro Lights, or its profits thereon, solely for the purpose of deterrence." *Id.* at 791.

refund" is merely coincidental; the court would have precluded *any claimed measure* which was not supported by admissible evidence of some amount of harm.

Second, the *Tobacco II* court expressly stated its conclusion as dependent upon the factual context of the case before it ("restitution is not available **here** for the exclusive purpose of deterrence", 240 Cal.App.4th at 801 [emphasis added]). The court did not purport to enunciate an exclusive rule of restitution measurement to apply in all cases. The court merely addressed the two potential measures proposed by the plaintiffs there. First, the plaintiffs proposed the "difference measure" urged by CashCall here. While that was *one* acceptable way to measure restitution, it failed on the record in that case because the trial court's rejection of plaintiffs' expert evidence was affirmed on appeal leaving no admissible evidence to support it. *Id.* at 788.[5] Second, as just noted, the court rejected plaintiffs' alternative proposal that deterrence alone could support an award even without any admissible supporting evidence. *Id.* at 801-802.

Third, the court's *reductio ad absurdum* explanation for its conclusion ("Under plaintiffs' theory, a full refund would be available on any product, even

---

[5] Moreover, the court of appeal in *Tobacco II* was addressing restitution arguments alternatively pressed, repudiated and then "backpedaled" by the plaintiffs in the trial court. 240 Cal.App.4th at 793-794. The court noted that plaintiffs had been "less than forthcoming" in their appellate briefing on that subject. (Id.)

costly items such as cars, yachts, and planes, based on UCL violations that had little or no impact on value") fails to recognize that extreme, unjustified restitution awards will be subject to appellate review for abuse of discretion in all circumstances. Were a trial court to order return of the purchase price of a yacht because the seller lied about the number of ropes onboard, it would be reversed for exceeding the bounds of reasonable discretion every day of the week. Such a possibility is no justification for tying a trial court's hands as a general matter.

Fourth, as explained below, it is significant that *Tobacco II* was addressing a "fraudulent" prong claim under the UCL, asserting false advertising, rather than an "unlawful" prong claim.

In summary, *Tobacco II* offers little or no support for CashCall's assertion here, i.e. that there is only one permissible way to measure UCL restitution. If for any reason this Court should conclude otherwise, *amici* urge the Court nevertheless to reject CashCall's assertion as inconsistent with the important role that deterrence plays under the UCL.

C. The Court, In Awarding Restitution In An "Unlawful" Prong Case, Can Properly Take Into Account The Policies And Remedies Specified In the Underlying Statute

The restitution award in this case resulted from proof of a violation of the UCL's "unlawful" prong. CashCall argues that the particular prong of the UCL at

issue is irrelevant to the question of the proper measure and amount of restitution in a case. (AOB at 54-56; Reply Brief at 42.) We disagree.

While CashCall is correct that the remedies available for a violation of the UCL are those specified in §17203, not the remedies provided for in the underlying violated statute, that does not mean that the policies and remedies prescribed in the underlying statute are irrelevant when it comes to setting the amount of restitution proper under the circumstances of the case. To the contrary, the purposes sought to be fulfilled by the underlying statute – as well as the remedies set forth in that statute – may bear upon the trial court's exercise of discretion in making a UCL restitution award.

The trial court properly noted that the pertinent section of the Financial Code prohibited unconscionable loans -- full stop. Thus, CashCall's *loans* were unconscionable and unlawful, not merely some particular aspect or requirement of those loans. All amounts collected by CashCall on those loans were payments collected pursuant to illegal contracts. That fact puts this case into a much different posture than a case such as *Tobacco II*, where the transaction itself (the sale of cigarettes) was perfectly legal in all aspects, with the UCL violation relating only to a marketing claim about one supposed benefit of the product being sold. The illegality of the loans is surely something proper to be taken into account when determining appropriate restitution.

Similarly, the trial court properly considered the Financial Code's specified remedies for violations of its provisions. Section 22750 states that, if the violation is willful, any violative loans are "void" and the lender has no right to collect or receive any recompense whatsoever, including any principal or charges associated with the loan. Sections 22751 and 22752 provide that non-willful violations result in "forfeit" of any interest but allow for the recovery of loan principal. The trial court's award of restitution here tracks the less harsh result of the latter two sections. The trial court was not required to ignore the Legislature's views about proper remedies in this area; the restitution award met both requirements for such awards. It was grounded in admissible evidence and represents the return of funds which once were possessed by the victims of the challenged business practice. Bus. & Prof. Code §17203; *Zhang, supra*, 57 Cal.4th at 371; *Colgan, supra*, 135 Cal.App.4th at 700.

The court of appeal's decision in *Espejo v. The Copley Press, Inc*. (2017) 13 Cal.App.5th 329 illustrates this point. There, the court considered whether a UCL restitution award in an "unlawful" prong case should be vacated and reconsidered. The case involved a claim against Copley for restitution of certain unreimbursed business expenses its employees had incurred. Copley argued that it had expressly paid "enhanced compensation" (i.e. extra wages) to its employees to cover all such expenses – an approach authorized by the Labor Code as an exception to the direct

reimbursement requirement. However, a Supreme Court decision construing the Labor Code required that the employer communicate to its employees sufficient information when paying "enhanced compensation" to allow the employees to determine whether their expenses exceeded the extra amounts. *See, Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. The Court of Appeal in *Espejo* affirmed the trial court's ruling that Copley had not sufficiently communicated the details of its enhanced wage payments, had therefore violated the Labor Code provisions, and thus committed unlawful acts prohibited by the UCL. 13 Cal.App.5th at 363-367.

Copley argued nevertheless that the UCL restitution award should have been limited to the net difference between the unpaid expenses and the extra compensation that Copley had indisputably actually paid. The court rejected that argument. "[Copley] argues that even if it did not satisfy *Gattuso's* requirements, equity requires reversal of the judgment and remand to reconsider crediting [Copley] for its payment of enhanced compensation." (*Id.* at 367.) However, "[a]lthough plaintiffs elected to seek recovery of their business expenses as restitution under section 17200, the [trial] court properly held [Copley] to *Gattuso's* requirements for an enhanced-compensation defense to a section 2802 claim because section 2802 was the predicate statute for plaintiffs' cause of action under section 17200." (*Ibid.*)

Notably, contrary to CashCall's contention in this appeal, the court rejected the argument that it was necessary to compare the amount of the employees' claims for unpaid compensation and the value of what they received (i.e. an amount of enhanced compensation).[6] *Espejo* is thus an example of the proper consideration given to the underlying statute's provisions when deciding upon the appropriate amount of UCL restitution in an unlawful prong UCL action.

III. CONCLUSION

For the foregoing reasons, *amici* respectfully urges this Court to reject CashCall's request for reversal of the restitution award in this case.

Respectfully submitted,

June 23, 2025 /s/ Robert M. Bramson

BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
Robert M. Bramson (SBN 102006)
2125 Oak Grove Road
Suite 210
Walnut Creek, CA 94598
(925) 945-0200
rbramson@bramsonplutzik.com

Attorneys for *Amici* Public Good Law Center, National Association of Consumer Advocates and Center For Responsible Lending

[6] The *Espejo* court came to a different conclusion in considering the trial court's failure to credit Copley with some direct expense reimbursements when calculating restitution. The trial court properly exercised its discretion to award restitution in the amount of all unreimbursed expenses. But having selected that measure, the calculation of the award needed to accurately match the evidentiary record of expenses and reimbursements. 13 Cal.App.5th at 368-370.

CERTIFICATE OF WORD COUNT
(California Rule of Court 8.204(c)(1))

This brief, including footnotes but excluding those portions of the brief excludable under California Rule of Court 8.204(c)(3), contains 4,470 words as counted by the Microsoft Word processing program.

Dated: :June 23, 2025 /s/ Robert M. Bramson

Robert M. Bramson

PROOF OF SERVICE

I, Robert M. Bramson, declare:

I reside in Contra Costa County, California. I am over the age of 18 years old and not a party to this action. I am employed by Bramson, Plutzik, Mahler & Birkhaeuser, LLP and my business address is 2125 Oak Grove Road, Suite 210, Walnut Creek, CA 94598.

On June 23, 2025, I served a true and correct copy of:

Amicus Curiae Brief In Support of Respondent Eduardo de la Torre (Application For Permission To File Amicus Curiae Brief Included) of the Public Good Law Center, the National Association of Consumer Advocates and the Center For Responsible Lending

as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on June 23, 2025 at Walnut Creek, California.

/s/ Robert M. Bramson

Robert M. Bramson

SERVICE LIST

De La Torre v. CashCall, Inc.
Court of Appeal Case No. A169205

Name	Attorney for	Service of Electronic Copy to
Brad W. Seiling	Appellant CashCall, Inc.	bseiling@manatt.com
Donald R. Brown	Appellant CashCall, Inc.	dbrown@manatt.com
Joanna S. McCallum	Appellant CashCall, Inc.	jmccallum@manatt.com
Robin Meadow	Appellant CashCall, Inc.	rmeadow@gmsr.com
Joseph V. Bui	Appellant CashCall, Inc.	jbui@gmsr.com
Alex Chemerinsky	Appellant CashCall, Inc.	achemerinsky@gmsr.com
Zahra Alamire	Appellant CashCall, Inc.	zalamire@gmsr.com
Arthur D. Levy	Respondent Edward de la Torre	arthur@yesquire.com
James C. Sturdevant	Respondent Edward de la Torre	jsturdevant@sturdevantlaw.com
Steven M. Tindall	Respondent Edward de la Torre	smt@classlawgroup.com
Jessica Riggin	Respondent Edward de la Torre	jriggin@rukinhyland.com
Damon Connolly	Respondent Edward de la Torre	damon@damonconnollylaw.com

Attorney General of the State of California per Bus. & Prof. Code, § 17209		Upload per: https://oag.ca.gov/services-info/17209-brief/add

Paper Copy To:

Clerk of the Superior Court of San Mateo	Trial court	Mail to: Hall of Justice and Records, 400 County Center, Redwood City, CA 94063