

[Ninth Circuit Applies California UCL Standards, Confirming Recent State Law Precedents](#)

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In a follow up to last week's post regarding the [Nelson v. Pearson](#) opinion, the Ninth Circuit has now applied similar principles when applying California state law. In [Rubio v. Capital One Company](#), the Ninth Circuit further confirmed that all that is required to establish a plaintiff's standing under the California Unfair Competition Law ("UCL") is an allegation of some lost "money or property" fairly traceable to unlawful, unfair, and/or fraudulent conduct by the defendant.

Raquel Rubio ("Rubio") received a credit card solicitation from Capital One Bank ("Capital One") offering a 6.99% fixed rate. The fixed rate was further explained in smaller text on the page as being fixed, so long as none of three conditions occurred: (1) a late payment; (2) charges are made over the credit limit; and (3) a payment is returned for any reason. Rubio did not allow any of those conditions to occur; however, three years later, Rubio received a letter noting that her APR of 6.99% would increase to 15.9%. Rubio could avoid the increase only by closing her credit card account and paying off the balance on the card by the end of the next month. Capital One defended the hike in interest rate by referring to additional language in eight-point type, found under the heading "Terms of Service," that stated "[m]y Agreement terms (for example, rates and fees) are subject to change."

Rubio brought suit alleging violations of the federal Truth in Lending Act ("TILA"), the UCL and breach of contract. The Ninth Circuit agreed with the District Court by finding that there was no breach of contract because the solicitation was not a contract, and therefore, Capital One was not bound by its terms. The Ninth Circuit found however that it was error for the District Court to dismiss Rubio's TILA claims because Capital One failed to show that its APR disclosure in the solicitation was "in a reasonably understandable form and readily noticeable to the consumer." Therefore, the Court reversed the trial court's decision to dismiss the TILA claim, sending it back for further proceedings.

As for standing to assert the UCL claim, the Court noted that "a private plaintiff needs to have 'suffered injury in fact and ... lost money or property as a result of the unfair competition.'" In other words, Rubio needs to be able to show that she has lost "money or property" sufficient to constitute an "injury in fact" under Article III of the Constitution. The Court found that Rubio had sufficiently alleged a loss of money or property. More specifically, the Court held:

Rubio has alleged a loss of money or property. When Capital One increased the APR from 6.99% to 15.9%, it gave Rubio a choice either to close the account and pay off the outstanding balance, or to keep the account open and accept the increased APR. Rubio does not allege which choice she accepted, though either would cause a loss of money or property. If she closed the account, she would have suffered a monetary

loss by losing the credit that Capital One extended. If she kept her account open, she would have accepted a higher APR and thus also lost money. This “actual economic injury” is enough to create standing under the UCL.

Having found that Rubio had sufficiently alleged standing to pursue the UCL claim, the Ninth Circuit next turned to the merits of that cause of action. The Court found that Rubio had properly alleged a UCL cause of action under any of its three prongs because: (1) by alleging a TILA violation, Rubio had also properly alleged a UCL violation under the “unlawful” prong of the UCL; (2) by alleging the facts of the solicitation, she may show “that reasonable members of the public are likely to be deceived,” thus establishing the “fraudulent” prong; and (3) by alleging that the potential for deceit outweighs the public utility of the solicitation, Rubio had stated a claim under the UCL’s “unfair” prong. Therefore, the Ninth Circuit reversed the district court’s dismissal of Rubio’s UCL claim.

The Ninth Circuit’s opinion reconfirms the standing and merit requirements for a plaintiff to bring a UCL claim. When reading the opinion, there is nothing novel about the use of UCL standards and prior precedents. Indeed, the Ninth Circuit applied UCL requirements that likely all of the parties agreed upon. However, what is interesting is how the District Court and the Ninth Circuit are able to come to diametrically conflicting results, when both are applying the same “law.” For example, the trial judge found that the inclusion of “terms are subject to change” completely undermined Rubio’s lawsuit, while the Ninth Circuit found the solicitation potentially fraudulent, despite the same language. Both courts had to apply their own subjective judgments and opinions about what is deceitful, resulting in vastly differing results. Thus, this case demonstrates that it is an advocate’s job in not only pointing out to the court what the law is, but also the more artful (and harder to practice) task of explaining to the decision-maker why his or her preexisting beliefs and viewpoints already comport with the story the advocate is offering.

Barger & Wolen has extensive experience arguing UCL actions on behalf of its clients, in both state and federal court.