National Association of Consumer Advocates
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July 1, 2023

Via Email

The Honorable Brian Maienschein
Chair of the Assembly Judiciary Committee
1021 O Street, Room 3420
Sacramento, CA 95814

Re: SB71 (Umberg) -- OPPOSE

Dear Assembly Member Maienschein:

I have been representing consumers for more than 50 years. I helped to create the National Association of Consumer Advocates nearly 30 years ago, have served on its board and several of its committees. NACA is one of many organizations in opposition to SB 71. I am authorized to represent NACA as well as myself, my firm and my clients throughout California through this letter.

I wrote to Senator Umberg on June 21, 2023 about his bill (SB 71) which would increase the jurisdictional limits for umlimted jurisdiction courts. The bill is principally supported by debt collectors. I expressed my opposition to the bill and listed a number of reasons why it would harm vulnerable consumers. I learned late last week and again this week that Senator Umberg was continuing negotiations over the provisions in the bill. I urge you and other members of your committee to restrict the legislation to personal injury and business disputes to protect consumers from the significant limitations imposed upon them in limited jurisdiction courts in California and their inability to vindicate their rights under various consumer protection statutes. I understand that the bill will now be heard in Assembly Judiciary on July 11th.

Consumers throughout California are sued daily in limited jurisdiction courts for debts derived from unconscionable loans. These collection lawsuits and their underlying claims frequently violate California consumer protection statutes including the Song Beverly Act, the Consumer Legal Remedies Act, the Fair Debt Collection Practices Act, California's lemon law, the Unfair Competition Law, the Elder Abuse Act and others. Consumers are sharply curtailed in their efforts to obtain the discovery necessary to prove their claims as I and many organizations have detailed in their letters of opposition.

For more than fifteen years I have handled with other counsel a class action against CashCall, a predatory online lender, which charged 96-135% for $2,600 loans for three and one-half years. It set the minimum amount of the loan to evade the interest rate caps for loans of less than $2,500 then in the Financial Code. In 2018 the California Supreme Court unanimously held that the interest rate alone on these loans could be held unconscionable and upheld an affirmative claim under California's UCL to challenge the loan terms. *De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966. In part because of this decision, the California legislature passed legislation (AB 539) which imposed a 36% cap on loans between $2,500 and $10,000 which became effective in January, 2020.

We tried the unconscionability claim in the CashCall case in 2021. In November, 2022 the trial court issued a Proposed Statement of Decision concluding that the loan terms were unconscionable, that CashCall set the loan amount at $2,600 to evade the interest rate caps for loans below $2,500 and awarded restitution of more than $251 million to nearly 135,000 class members who paid more than the principal amount on their loans. *De La Torre v. CashCall, Inc.*, No. 19-01235 (San Mateo Superior Court). A copy of the proposed decision is attached.

In April, 2023, I co-tried a consumer case on behalf of a single plaintiff in federal court who challenged on multiple grounds the business model of a large finance company which charged 120% interest on small value loans for discount retail consumer goods. *Andrade v. American First Finance, Inc.*, Civil No. 18-cv-06743-SK (N.D. Cal.). To evade California's Finance Code, the lender designed a scheme to create retail installment sales contracts that were pre-assigned to it by the retailer. The lender drafted all the forms, contracts and established the protocols for the program and directed the marketing. It controlled the entire scheme from beginning to end.

The evidence at trial established that the plaintiff was never given a copy of the Security Agreement, never signed it and was not told the interest amount until many months after she purchased the furniture. In response to her complaints, AFF told her to file a police report and continue paying.

On June 28, 2023 the district court entered an Order on Equitable Relief finding that the scheme violated California's Unfair Competition Law in three separate respects and that the interest rate of 120% was procedurally and substantively unconscionable. The court ordered restitution of the full amount the plaintiff had paid on the loan of more than $2,100 on the purchase price of $1,200 for a bedroom set of furniture. As the Order recites, American First Finance sought to collect on the debt when the consumer stopped paying and reported negative credit information to a credit reporting agency. A copy of the Order is attached.

American First Finance's rate of 120% was three times higher than the highest rate for a subprime borrower – the riskiest category of borrower – for unsecured transactions in the nation. And through discovery we learned that AFF made more than 178,000 loans of less than $2,500 in California.

Separately, I and many other attorneys in California have represented individuals sued in limited jurisdiction courts throughout California to collect debts on these loans either by the original lenders or debt buyers. The borrowers are hampered by limited discovery and other procedural

barriers in asserting defenses and affirmative claims. And without effective discovery, these borrowers, even with counsel, are at a significant disadvantage to establish the business models which created unconscionable loans we were able to prove in the CashCall and AFF cases.

Based upon these recent developments, I urge you to OPPOSE the proposed legislation unless amended to exempt from it all non personal injury and non business cases.

I would be happy to talk with you or members of your staff at their convenience. Thank you for considering my points.

Respectfully,

James C. Sturdevant

Neil B. Fineman
California Co-State Chairperson,
National Association of Consumer Advocates

cc. Members of Assembly Judiciary Committee

Enclosures