

California Last State to Join Multistate Settlement of Western Union Fraud Schemes

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Last week, California became the 50th state to [join](#) the multistate settlement with Western Union over its alleged complicity in fraud-induced wire transfers. This followed Western Union’s \$5 million agreement with 49 state and the District of Columbia for costs and fees in January, not to mention a whopping \$586 million in settlement agreements with the United States DOJ and FTC. While DOJ brought wire fraud and anti-money laundering charges against Western Union, and the FTC alleged violations of Section 5 of the FTC Act, and the Telemarketing Sales Rule, the states raised violations of their respective consumer protection laws. California brought its complaint pursuant to the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17209 (“UCL”), its analog to the FTC Act.

Some quick background on the UCL:

- Traditionally, the UCL is thought to prohibit unfair competition, which includes unfair, deceptive, misleading, or false advertising. § 17200; *see Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 512 (2003) (whether “the ordinary consumer acting reasonably under the circumstances” is likely to be deceived).
- But the UCL also forbids business activity unconnected with advertising when such activity constitutes an “unlawful” or “unfair” business practice that either violates another law or violates an established public policy. § 17200; *see e.g., In re Anthem Data Breach Litig.*, 162 F. Supp. 3d 953, 990 (N.D. Cal. 2016); *Ballard v. Equifax Check Servs., Inc.*, 158 F. Supp. 2d 1163, 1176 (E.D. Cal. 2001). Some common defenses to these claims include compliance with the underlying law, the practice is not unfair or is justified, and federal preemption.
- The UCL provides private plaintiffs with the ability to bring claims for restitution and injunctive relief, while the government can also impose civil penalties of up to \$2,500 per violation. §§ 17203, 17206; *see e.g., People v. JTH Tax, Inc.*, 212 Cal. App. 4th 1219, 1254 (2013) (“[T]he court could have imposed penalties of over \$9 million, but only imposed penalties of \$715,344 for these advertisements.”).

Here, the California Attorney General alleged that Western Union, during the course of its money transferring services, failed to scrutinize and stop complicit agents that did not comply with anti-money laundering policies, inadequately trained, vetted and reported agents, and overall did not

“prevent fraudulent telemarketers, sellers, and con artists from using Western Union’s money transfer system to perpetrate their frauds.” In other words, Western Union exposed its customers to fraud in violation of the UCL.

As part of the global settlement, Western Union agreed to implement a comprehensive anti-fraud program to detect and prevent future incidents. California consumers who made a wire transfer through Western Union are entitled to a share of the DOJ restitution fund and may be eligible for more than \$65 million in refunds. The California Department of Justice also may recoup costs and fees from the \$5 million multistate fund.

Bottom line: the UCL is a dynamic enforcement mechanism with the potential to curtail many different types of business activities that seemingly harm consumers, and provides the Attorney General with the ability to inflict stiff penalties for violations.