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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

17 NELSON SEQUEIRA, ORSAY ALEGRIA, and
18 ISMAEL CORDERO, individually and on behalf
19 of all others similarly situated,

20 Plaintiffs,

21 v.

22 U.S. DEPARTMENT OF HOMELAND
23 SECURITY, U.S. IMMIGRATION &
24 CUSTOMS ENFORCEMENT; WESTERN
25 UNION FINANCIAL SERVICES, INC., a
26 Colorado corporation; CONTINENTAL
27 EXCHANGE SOLUTIONS, INC., a Kansas
28 corporation, d/b/a RIA FINANCIAL SERVICES
and AFEX MONEY EXPRESS; VIAMERICAS
CORPORATION, a Delaware corporation; and
DOLEX DOLLAR EXPRESS, INC., a Texas
corporation,

Defendants.

Case No. 4:22-cv-07996-HSG
Assigned to the Hon. Haywood S. Gilliam, Jr.

**NOTICE OF MOTION AND MOTION TO
DISMISS PLAINTIFFS' AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Documents Filed Herewith

- 1. Request for Judicial Notice
- 2. [Proposed] Order

Hearing Date:

Date: May 18, 2023
Time: 2:00 p.m.
Crtrm.: 2 - 4th Floor

Complaint Filed: December 12, 2022
FAC Filed: January 24, 2023
Trial Date: None

TO THE COURT, THE PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE on May 18, 2023, or as soon thereafter as it may be heard, in
courtroom 2 of the above-entitled court, located at 1301 Clay Street, Oakland, California 94612,

1 defendant DolEx Dollar Express, Inc. (**DolEx**) will, and hereby does, move to dismiss plaintiffs' first
2 amended complaint (**FAC**), doc. no. 38.

3 This motion is brought pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds
4 the FAC fails to state a claim upon which relief may be granted. This motion is based on this notice
5 and motion, the following memorandum of points and authorities, DolEx's request for judicial notice
6 (**RJN**) and accompanying exhibits, and any additional matters as may be judicially noticed or may
7 come before the court prior to or at the hearing.

8 Dated: March 3, 2023.

Respectfully submitted,

9 **AKERMAN LLP**

10 By: /s/ Taylor T. Haywood
11 Parisa Jassim
12 Taylor T. Haywood

13 *Attorneys for defendant DolEx Dollar Express,*
14 *Inc.*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs bring individual and putative class claims against DolEx, several other money
4 transfer businesses and two federal government agencies, all basing on the core allegation that the
5 money transfer businesses improperly provided plaintiffs' and other "unsuspecting customers"
6 financial records to the federal government without consent. According to plaintiffs, DolEx delivered
7 "bulk [money transfer] transaction data" to the Transaction Records Analysis Center (**TRAC**), an
8 entity created by the Arizona Financial Crimes Task Force that maintains a "centralized database of
9 money transactions concentrated in the southwest border-states and Mexico," in response to formal
10 records requests—authorized under Arizona state law—from the Arizona attorney general. Plaintiffs
11 claim by complying with the Arizona attorney general's records requests, DolEx violated the federal
12 Right to Financial Privacy Act (**RFPA**), 12 U.S.C. § 3401 *et seq.*, and California's Unfair Competition
13 Law (**UCL**), California Business & Professions Code § 17200. The court should dismiss.

14 "The most salient feature of the [RFPA] is the narrow scope of the entitlements it creates."
15 *Sec. and Exch. Comm'n v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 745 (1984). To maintain their RFPA
16 claim, plaintiffs must plead facts showing (1) plaintiffs are DolEx's "customers;" (2) DolEx is a
17 "financial institution;" (3) DolEx produced financial records; and (4) DolEx produced those records to
18 a "Government authority." The FAC does not satisfy a single element.

19 To qualify as "customers" under 12 U.S.C. § 3401(5), plaintiffs must allege they maintain or
20 maintained an account at DolEx. The FAC contains no such allegation, meriting dismissal.

21 Plaintiffs do not adequately allege DolEx is a "financial institution," either. They describe
22 DolEx as a money transfer business that exists to "enable people to send and receive money across
23 borders" and "facilitate remittances," pleading themselves out of court. Money transfer businesses are
24 not "financial institutions" under the RFPA. The argument DolEx is a "financial institution" under 12
25 U.S.C. § 3401(1) because it is a "consumer finance institution" is unavailing. Statutory construction
26 principles dictate a company must provide financing as a core part of its business to qualify. Plaintiffs
27 do not allege DolEx provides financing as a core part of its business. Nor can they—DolEx does not
28 provide financing.

1 Plaintiffs also fail to adequately plead DolEx produced "financial records" to a "Government
2 authority." They merely allege DolEx provided "bulk [money transfer] transaction data" to TRAC, at
3 the request of the Arizona attorney general. The data DolEx allegedly provided does not qualify as a
4 "financial record" under the RFPA's narrow definition. And neither TRAC nor the Arizona attorney
5 general are "Government authorit[ies]" under the RFPA.

6 The UCL claim fares no better. DolEx provided data to TRAC in response to records requests
7 from the Arizona attorney general, authorized under Arizona state law, barring their claim. For these
8 reasons and the additional reasons set forth below, the court should dismiss all claims against DolEx.

9 II. RELEVANT FACTS

10 Plaintiffs are California residents who "regularly" used money transfer companies such as
11 DolEx to send \$500 or more to their family abroad. (FAC, ¶¶1-3, 53, 54.) Mr. Sequeira and Mr.
12 Cordero allegedly used defendant Western Union Financial Services, Inc.'s services, and Mr. Alegria
13 allegedly used DolEx and defendant Continental Exchange Solutions, Inc. d/b/a Ria Financial
14 Services and AFEX Money Express's services. (*Id.* ¶¶53, 54.) They each claim they were "never
15 informed" that "records from [their money transfer] transactions would be shared with the federal
16 government without a valid warrant, subpoena or court order, and would remain in a mass database
17 accessible by hundreds of government agencies indefinitely." (*Id.*)

18 Plaintiffs complain DolEx produced "bulk transaction data" regarding the money transfers
19 they made to TRAC, at the Arizona attorney general's request, without complying with the RFPA.
20 (*Id.* ¶32.) They do not specify what information DolEx allegedly provided, but allege the data "may
21 include":

22 the sender's name, sender's address, sender's phone number, sender's date of birth,
23 sender's occupation, sender's social security number, payee's name, payee's address,
24 payee's phone number, payee's date of birth, payee's occupation, payee's social security
25 number, sender's and payee's identification numbers and types (passport or other ID
26 numbers), dates and times of transactions, operators' names, sending agent's address,
27 paying agent's address, and the sending and paying countries, currencies, and dollar
28 amounts.

(*Id.* ¶36.)

Plaintiffs plead individual and class claims for (1) RFPA violations and (2) UCL violations.

1 (*Id.* at 20-22.)

2 **III. QUESTIONS PRESENTED**

3 1. Whether the FAC fails an RFPFA claim because plaintiffs fail to adequately plead: (i)
4 plaintiffs are DolEx's "customers" under 12 U.S.C. § 3401(5); (ii) DolEx is a "financial institution"
5 under 12 U.S.C. § 3401(1); (iii) DolEx produced "financial records" under 12 U.S.C. § 3401(2); and
6 (iv) DolEx produced those records to a "Government authority," as that term is defined in 12 U.S.C. §
7 3401(3).

8 2. Whether the FAC fails to state a UCL claim because DolEx provided records to TRAC
9 under valid Arizona records requests.

10 **IV. LEGAL STANDARD**

11 To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as
12 true "to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949
13 (2009) (quoting *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). "Dismissal can be based on the lack
14 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."
15 *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

16 **V. ARGUMENT**

17 **A. The court should dismiss the RFPFA claim**

18 The RFPFA states: "No financial institution, or officer, employees, or agent of a financial
19 institution, may provide to any Government authority access to or copies of, or the information
20 contained in, the financial records of any customer except in accordance with the provisions of this
21 chapter." 12 U.S.C. § 3403(a).

22 To maintain a claim, plaintiffs must allege facts showing: (1) the plaintiff is a "customer;" (2)
23 the defendant is a "financial institution;" and (3) the defendant released "financial records" to (4) a
24 "Government authority." *See id.* The FAC fails on each element.

25 **1. *Plaintiffs do not adequately allege they are or were DolEx "customers"***

26 Plaintiffs must be DolEx's "customers" to maintain their claim. *Lynn v. United States*, No.
27 1:13-CV-00570-WTL, 2013 WL 6989358, at *1 (S.D. Ind. Nov. 14, 2013), *report and*
28 *recommendation adopted*, No. 1:13-CV-00570-WTL, 2013 WL 6255263 (S.D. Ind. Dec. 4, 2013).

1 The RFPA defines "customer" as "any person or authorized representative of that person who
 2 utilized or is utilizing any service of a financial institution, or for whom a financial institution is
 3 acting or has acted as a fiduciary, *in relation to an account maintained in that person's name.*" 12
 4 U.S.C. § 3401(5) (emphasis added); *see also Longi v. New York*, No. CV-02-5821 (SJF) (JO), 2006
 5 WL 8441210, at *27 (E.D.N.Y. June 26, 2006). Courts strictly construe the "customer" definition.
 6 *Flatt v. U.S. Sec. and Exch. Comm'n*, No. 10-60073-MC, 2010 WL 1524328, at *3 (S.D. Fla. Apr. 14,
 7 2010); *see also In re Porras*, 191 B.R. 357, 359 (Bankr. W.D. Tex. 1995) (quotations and citations
 8 omitted) ("[T]hose courts which have been called upon to construe this term have adhered strictly to
 9 the explicit, unambiguous definition of customer found in the [RFPA].") And, as the Supreme Court
 10 noted, the RFPA "carefully limits the kinds of customers to whom it applies." *Jerry T. O'Brien, Inc.*,
 11 467 U.S. at 745.

12 Plaintiffs allege they are "customers under 12 U.S.C. § 3401(5) because they utilize the
 13 services of [the money transfer business defendants] and other money transfer companies." (FAC
 14 ¶66.) This allegation is insufficient. To satisfy the "customer" definition, each plaintiff must *also*
 15 allege he or she utilized DolEx's services "in relation to an account maintained in the person's name."
 16 *See* 12 U.S.C. § 3401(5). The FAC contains no such allegations, meriting dismissal. *See Young v.*
 17 *Trans Union*, No. C 06-0114-CRB-PR, 2012 WL 12844773, at *7 (N.D. Cal. Aug. 29, 2012)
 18 (granting VISA summary judgment in part as it "does not maintain accounts in cardholders' names.")

19 Any argument plaintiffs did not need to maintain an account with DolEx because the statutory
 20 phrase "in relation to an account maintained in that person's name" modifies only "for whom a
 21 financial institution is acting or has acted as a fiduciary" in 12 U.S.C. § 3401(5) is wrong. *See Chao*
 22 *v. Cmty. Tr. Co.*, 474 F.3d 75, 82 (3rd Cir. 2007); *see also Duncan v. Belcher*, 813 F.2d 1335, 1338
 23 (4th Cir. 1987) ("The Act by its terms protects any person who uses a financial service 'in relation to
 24 an account maintained in the person's name.'") This court should reject any such argument and find
 25 plaintiffs do not adequately plead they satisfy the RFPA's "customer" definition.

26 **2. Plaintiffs do not adequately allege DolEx is a "financial institution"**

27 The RFPA applies only to "financial institutions." 12 U.S.C. §§ 3403(a), (b). Keeping with
 28 its narrow scope, not every company involved in finance is a "financial institution." The RFPA limits

1 "financial institution[s]" to "any office of a bank, savings bank, card issuer . . . , industrial loan
 2 company, trust company, savings association, building and loan, or homestead association (including
 3 cooperative banks), credit union, or consumer finance institution, located in any State[.]" 12 U.S.C. §
 4 3401(1). Plaintiffs allege DolEx satisfies this definition because it is a "consumer finance institution."
 5 (FAC ¶67.) The court should reject their argument.

6 **a. Money transfer businesses are not "financial institutions" under RFPA**

7 Plaintiffs allege DolEx and the other money transfer business defendants are "financial
 8 institutions" under the RFPA because they are "consumer finance institutions located in the United
 9 States." (*Id.* ¶67.) They do not plead any facts supporting this conclusion though, instead describing
 10 money transfer businesses like DolEx as companies who "enable people to send and receive money
 11 across borders" and "facilitate the sending of remittances." (*Id.* ¶22.) Money transfer businesses—
 12 businesses that, in plaintiffs' own words, exist to facilitate the sending of remittances and enable
 13 people to send and receive money across borders—do not satisfy the "financial institution" definition.

14 The court must assume Congress means what it says. *Williams v. Paramo*, 775 F.3d 1182,
 15 1188 (9th Cir. 2015). If Congress intended to regulate money transfer businesses as "financial
 16 institutions," it would have included them in the laundry list of qualifying entities in 12 U.S.C. §
 17 3403(1). It didn't. And Congress most certainly knows how to include money transfer businesses in
 18 statutory definitions when it desires to regulate them. In the Bank Secrecy Act, 31 U.S.C. § 5312, for
 19 instance, Congress defined "financial institution" much more broadly than in the RFPA to include:

20 a licensed sender of money or other person who engages as a business in the
 21 transmission of currency, funds, or value that substitutes for currency, including any
 22 person who engages as a business in an informal money transfer system or any
 23 network of people who engage as a business in facilitating the transfer of money
 domestically or internationally outside of the conventional financial institutions
 system.

24 31 U.S.C. § 5312(a)(2)(R). Congress also specifically included money transmitters in defining
 25 "financial product and service" in Title X of the Dodd-Frank Act. *See* 12 U.S.C. § 5481(15)(a)(iv)
 26 (defining "financial product or service" to include "transmitting or exchanging funds.") This court
 27 cannot read "money transfer businesses" into the list of entities to which the RFPA applies.
 28

1 **b. A "consumer finance institution" must provide financing as a core part of**
 2 **its business**

3 Ostensibly because Congress omitted money transfer businesses from the "financial
 4 institution" definition, plaintiffs try to wedge them within the RFPFA's ambit by claiming they are
 5 "consumer finance institutions." The court should reject this argument too.

6 The RFPFA does not define "consumer finance institution," *see* 12 U.S.C. § 3401, so the court
 7 must determine what it means. To do so, it begins with the statutory text and uses "the fundamental
 8 canons of statutory construction" as a guide. *Bare v. Barr*, 975 F.3d 952, 967 (9th Cir. 2020). The
 9 starting point is "the language employed by Congress and the assumption that the ordinary meaning of
 10 that language accurately expresses the legislative purpose." *Park 'N Fly, Inc. v. Dollar Park and Fly,*
 11 *Inc.*, 469 U.S. 189, 194 (1985). Statutory construction is "guided not just by a single sentence of
 12 sentence fragment, but by the language of the whole law, and its object and policy." *United States v.*
 13 *Balint*, 2014 F.3d 928, 933 (7th Cir. 2000) (citations omitted).

14 Statutory construction principles dictate the court should construe "consumer finance
 15 institution" to mean an entity that provides financing as a core part of its business. Dictionaries
 16 support this definition. Black's Law Dictionary defines "finance company" as "[a] nonbank company
 17 that deals in loans either by making them or by purchasing notes from another company that makes
 18 the loans directly to borrowers." Finance Company, BLACK'S LAW DICTIONARY (11th ed. 2019). It
 19 defines "consumer finance company" as "[a] finance company that deals directly with consumers in
 20 extending credit." Consumer Finance Company, BLACK'S LAW DICTIONARY (11th ed. 2019). Both
 21 confirm to be a "consumer finance institution," an entity must, at a minimum, make or "deal in" loans.

22 The *noscitur a sociis* canon also supports DolEx's definition—and narrowing the dictionary
 23 definition. That canon counsels "a word is given more precise content by the neighboring words with
 24 which it is associated." *United States v. Williams*, 553 U.S. 285, 294 (2008) (citations omitted). The
 25 term "consumer finance institution" appears in a string with banks, card issuers, loan and trust
 26 companies, and credit unions—all entities which "convey considerably more than a tangential or
 27 secondary relationship to the field of financing." *Commodity Futures Trading Comm'n v. Worth*
 28 *Bullion Grp., Inc.*, 717 F.3d 545, 551 (7th Cir. 2013). "A primary reason each of these entities exists

1 is to provide financing and cash loans to the general public, making these services a core function and
2 purpose of such businesses." *Id.* at 551.

3 Two courts that have considered this issue agree with DolEx's definition. In *Commodity*
4 *Futures Trading Commission*, the Seventh Circuit construed the term as meaning an entity which
5 provides financing and cash loans to the general public as "a core function and purpose" or "defining
6 characteristic" of its business. *Id.* Similarly, in *Federal Trade Commission v. Sterling Precious*
7 *Metals, LLC*, the court compared Congress's use of the word "institution" in the RFPA with its usage
8 of "company" elsewhere in the RFPA to define "consumer finance institution" as "something more
9 than a company that only tangentially engages in financing." No. 12-80597-CIV, 2013 WL 1442180,
10 at *3 (S.D. Fla. Apr. 9, 2013).

11 The RFPA's legislative purpose supports DolEx's definition as well. The RFPA was crafted
12 "to strike a balance between customers' right of privacy and the need of law enforcement agencies to
13 obtain financial records pursuant to legitimate investigations." *Collins v. Commodity Futures Trading*
14 *Comm'n*, 737 F. Supp. 1467, 1478 (N.D. Ill. 1990) (citations omitted.) And the Supreme Court has
15 commented its "most salient feature" is "the narrow scope of the entitlements it creates." *Jerry T.*
16 *O'Brien*, 467 U.S. at 745.

17 **c. DolEx does not provide financing as a core part of its business**

18 DolEx does not satisfy the "consumer finance institution" definition because it does not
19 provide financing as a core part of its business.

20 Plaintiffs concede as much. They allege DolEx is a money transfer business which facilitates
21 sending money outside the United States. (FAC ¶24.) They also allege "the vast majority of revenue"
22 at companies like DolEx "comes from person-to-person transfers," not providing financing. (*Id.*)

23 But even disregarding their concession, the court can dismiss. Judicially-noticeable public
24 records show DolEx does not even have a license to lend money. (RJN, Ex. 1.) If it cannot extend
25 financing at all, it cannot be a "consumer finance institution."

26 Plaintiffs' allegation DolEx's website advertises "quick and easy personal loans" does not
27 spare dismissal, for two reasons. (FAC ¶9.) *First*, plaintiffs do not allege DolEx provides "quick and
28 easy personal loans" as a core part of its business, as is necessary to establish DolEx is a "consumer

1 finance institution," as set forth above. And *second*, the website plaintiffs cite makes clear DolEx
 2 merely provides a platform for customers to apply for personal loans with Oportun—a completely
 3 separate corporation. (See **EXHIBIT A**¹; and RJN, Ex. 2.)

4 **3. Plaintiffs do not adequately allege DolEx disclosed "financial records"**

5 Under the RFPA's narrow definition, a "financial record" is "an original of, a copy of, or
 6 information known to have been derived from, any record held by a financial institution pertaining to
 7 a customer's relationship with the financial institution." 12 U.S.C. § 3401(2). Plaintiffs do not
 8 adequately plead DolEx disclosed "financial records" to TRAC. Plaintiffs are not DolEx "customers"
 9 and DolEx is not a "financial institution," as set forth above. By definition, the records it provided to
 10 TRAC cannot be "financial records" covered by the RFPA. See 12 U.S.C. § 3401(2) (incorporating
 11 the defined "customer" and "financial institution" terms into the "financial record" definition).

12 **4. Plaintiffs do not adequately allege DolEx made a disclosure to a "Government
 13 authority"**

14 Plaintiffs must also prove DolEx disclosed financial information to a "Government authority"
 15 to prevail on their claim. 12 U.S.C. § 3403(b).

16 A "Government authority" is "any agency or department of the United States, or any officer,
 17 employee or agent thereof[.]" 12 U.S.C. § 3401(3). The term does not include state authorities. See
 18 *id.*; see also *United States v. Zimmerman*, 957 F. Supp. 94, 96 (N.D. W.Va. 1997) (noting the RFPA
 19 has no application to "requests for information from state and local governmental agencies.")

20 Plaintiffs do not allege DolEx provided any information to a federal agency or department, or
 21 any federal officer, employee or agent of a federal agency or department. They only complain DolEx
 22 provided information to TRAC, at the Arizona attorney general's request. (FAC ¶47.) This is
 23 insufficient to support a valid claim. Neither TRAC nor the Arizona attorney general are
 24

25 ¹ The court can consider this printout from DolEx's webpage in ruling on this motion to dismiss
 26 because plaintiffs refer to it in the FAC, FAC ¶ 9, and it forms the basis for their allegation DolEx is a
 27 "financial institution" under the RFPA. See *e.g. Whitaker v. LL S. San Francisco, L.P.*, No. 21-CV-
 28 00632-HSG, 2021 WL 2291848, at *3 (N.D. Cal. June 4, 2021) (citing *United States v. Ritchie*, 342
 F.3d 903, 908 (9th Cir. 2003) ("Even if a document is not attached to a complaint, it may
 be incorporated by reference into a complaint if . . . the document forms the basis of the plaintiff's
 claim."))

1 "Government authorit[ies]" under the RFPA. *See* 12 U.S.C. § 3401(3); *see also* *Donahue v. Gavin*,
 2 No. Civ. A 98-1602, 1999 WL 165700, at *7 (E.D. Pa. Mar. 12, 1999) ("[T]he RFPA does not restrict
 3 state authorities' access to financial information.")

4 Plaintiffs allege DolEx was "well aware" federal agencies had access to TRAC in an effort to
 5 save their claim. (FAC ¶¶44, 47.) But whether DolEx had such knowledge is immaterial. The RFPA
 6 does not proscribe providing information to third parties who may make the information accessible to
 7 the federal government—in this instance a state-controlled entity formed for law enforcement
 8 purposes. *Cf. Byrd v. GMAC Mortg. LLC*, No. 1:19-cv-00651-DDD-STV, 2020 WL 4577461, at *3
 9 (D. Colo. Aug. 7, 2020) ("Reports by lenders to reporting agencies are not governed or prohibited by
 10 RFPA, even if they later fall into government hands.") It expressly prohibits disclosures to a
 11 "Government authority." 12 U.S.C. § 3403(a). And as the Supreme Court has noted, the RFPA is
 12 notable for the "narrow scope of the entitlement it creates." *Jerry T. O'Brien*, 467 U.S. at 745. If
 13 plaintiffs want to expand the RFPA's protections, they need to go to Congress, not this court.

14 **B. The court should dismiss the UCL claim because DolEx provided information to TRAC**
 15 **in response to valid Arizona records requests**

16 The UCL prohibits any "unlawful, unfair or fraudulent business act or practice[.]" CAL. BUS.
 17 & PROF. CODE § 17200. Plaintiffs base their claim on alleged violations of CAL. FIN. CODE § 4052.5,
 18 which, with certain exceptions, prevents financial institutions from selling, sharing, transferring, or
 19 otherwise disclosing nonpublic personal information to or with any nonaffiliated third parties without
 20 "explicit prior consent." (FAC, ¶¶79-89.) The court should dismiss.

21 CAL. FIN. CODE § 4056(b)(7) provides DolEx a safe harbor. It allows financial institutions to
 22 release nonpublic information "to comply with federal, state or local laws, rules, and other applicable
 23 legal requirements" and "to comply with a properly authorized civil, criminal, administrative, or
 24 regulatory investigation or subpoena or summons by state, federal or local authorities." Here,
 25 plaintiffs allege DolEx provided information to TRAC in response to "formal data requests" from the
 26 Arizona attorney general. (FAC, ¶¶32, 47.) Those "formal data requests" were properly authorized
 27 records requests under ARIZ. REV. STAT. § 13-2315 from the Arizona attorney general, placing DolEx
 28

1 squarely within CAL. FIN. CODE § 4056(b)(7)'s safe harbor. (**EXHIBIT B.**²)

2 Further, the records requests plaintiffs describe in the FAC show the Arizona attorney general
3 issued its requests under ARIZ. REV. STAT. § 13-2315, which permits it to issue records requests to
4 investigate racketeering, as defined in ARIZ. REV. STAT. § 13-2301, or illegal control of an enterprise,
5 as defined in ARIZ. REV. STAT. § 13-2312. (*Id.*) If a records request contains a sworn statement "that
6 the request is made in order to investigate racketeering . . . or a violation of § 13-2312," the furnisher
7 has no civil or criminal liability "in any action brought alleging violation of the confidentiality of such
8 records." ARIZ. REV. STAT. § 13-2315(A). All records requests described in the FAC, dating back to
9 2014, contain such a sworn statement. (**EXHIBIT B.**) The court should not allow plaintiffs to attempt
10 to use a California state statute to undermine the protections ARIZ. REV. STAT. § 13-2315 provides to
11 those responding to records requests from the Arizona attorney general, and dismiss their claim.

12 **V. CONCLUSION**

13 Plaintiffs do not adequately plead they are DolEx "customers," DolEx is a "financial
14 institution" or DolEx made an improper disclosure of "financial records" to a "Government agency,"
15 requiring the court to dismiss the RFPA claim. That DolEx provided information to TRAC in
16 response to valid records requests from the Arizona attorney general prevents plaintiffs from
17 maintaining their UCL claim. The FAC does not state a single valid claim against DolEx and should
18 be dismissed.

19 Dated: March 3, 2023.

Respectfully submitted,

20 **AKERMAN LLP**

21 By: /s/ Taylor T. Haywood
22 Parisa Jassim
23 Taylor T. Haywood

24 *Attorneys for defendant DolEx Dollar Express,
25 Inc.*

26 ² The court can consider the records requests because plaintiffs refer to them extensively, *see e.g.*,
27 FAC ¶¶32, 47, and their allegation "none of [the] requests complied with the RFPA" supports their
28 claims. *See Khoja v. Orexigan Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018) (The court may
"treats certain documents as though they are part of the complaint itself" if the plaintiff refers
extensively to the document or the document forms the basis of the plaintiff's claim.)