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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

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

19 Plaintiffs,

20 v.

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

27 Defendants.
28

Case No. 4:22-cv-07996-HSG

**DEFENDANT VIAMERICAS
CORPORATION'S NOTICE OF
MOTION AND MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT PURSUANT TO
RULES 12(B)(1) AND 12(B)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: May 18, 2023

Time: 2:00 p.m.

Judge: Hon. Haywood S. Gilliam, Jr.

Complaint filed: December 12, 2022

First Amended Complaint filed: January
24, 2023

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1 **NOTICE OF MOTION**

2 To the Court, all parties and their counsel of record: Pursuant to Civil Local Rule 7-2(b),
3 please take notice that Defendant Viamericas Corporation (“Viamericas”) hereby moves to
4 dismiss Plaintiffs’ first amended complaint (“FAC”) pursuant to Federal Rules of Civil Procedure
5 12(b)(1) and 12(b)(6). The Court has set a hearing for May 18, 2023. This motion is based upon
6 the accompanying memorandum of points and authorities, the supporting declaration of Mr.
7 Jaime Castaneda, all other pleadings and papers filed, and any arguments made at the hearing.

8 **INTRODUCTION**

9 The allegations in the FAC about Viamericas center around its activities as a money
10 transfer company. While Plaintiffs hedge by claiming that Viamericas is a “consumer finance
11 institution,” the only activity by Viamericas at issue in the FAC is in connection with its money
12 transfer business. Plaintiff Orsay Alegria alleges that Viamericas disclosed information about
13 himself and other money transfer customers to the federal government. Plaintiffs allege that this
14 disclosure violated the Right to Financial Privacy Act (“RFPA”), 12 U.S.C. §§ 3401 *et seq.* and
15 the California Financial Information Privacy Act (“CalFIPA”), Cal. Fin. Code §§ 4050 *et seq.*
16 The alleged violation of CalFIPA is the basis for Plaintiffs’ California Unfair Competition claim.
17 Cal. Bus. & Prof. Code §§ 17200 *et seq.*

18 Plaintiff’s claims against Viamericas should be dismissed with prejudice pursuant to
19 Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

20 First, the FAC does not state a valid legal claim against Viamericas under the RFPA. The
21 RFPA’s disclosure requirements expressly do *not* extend to money transfer businesses. 12 U.S.C.
22 § 3401(1) (defining “financial institution” and not including money transfer businesses). When
23 Congress wished to pull money transfer businesses within the scope of other RFPA provisions
24 that are not at issue in this case, Congress broadened the definition of “financial institutions” to
25 expressly include money transfer businesses. 31 U.S.C. § 5312(a)(2)(R). Congress chose not to
26 do so for the disclosure provisions of the RFPA that are at issue in this case. And Plaintiffs’
27 conclusory allegation that Viamericas is a “consumer finance institution”—a specific term within
28 12 U.S.C. §3401(1)—is insufficient to subject Viamericas to the disclosure requirements of the

1 RFPA because Plaintiffs do not allege that Viamericas provides consumer financing or loans, let
2 alone as its primary reason for existing or its core business offering to consumers.

3 Second, Plaintiff's California Unfair Competition claim fares no better. That claim is
4 premised on an alleged violation of CalFIPA. CalFIPA provides a safe harbor that exempts
5 disclosures made to law enforcement and as to investigations and subpoenas. *See* Cal. Fin. Code
6 §§ 4056(b)(5), (b)(7). Plaintiffs expressly allege that the disclosures here were to law
7 enforcement and for the purpose of investigations. Taking all of Plaintiffs' allegations as true,
8 Viamericas did nothing unlawful under the statute. There is no Section 17200 unfair competition
9 claim.

10 Finally, Plaintiff Alegria lacks standing to bring claims against Viamericas for purported
11 disclosures to the federal government because Viamericas did not produce his information to the
12 federal government. Viamericas produced information relating to Plaintiff Alegria pursuant to
13 subpoenas *issued by the Attorney General of the State of Arizona*. Neither the RFPA nor
14 CalFIPA regulates compliance with a state subpoena. To the extent any information about
15 Plaintiff Alegria was shared with the federal government, it was not the doing of Viamericas.

16 Viamericas requests that the Court grant its Motion to Dismiss without leave to amend.

17 STATEMENT OF FACTS

18 **A. Plaintiffs Bring Individual and Class Claims Against Six Defendants—Two** 19 **Federal Government Agencies and Four Money Transfer Companies.**

20 Plaintiffs Nelson Sequeira, Orsay Alegria, and Ismael Cordero bring claims individually
21 and on behalf of a proposed class against Defendants, seeking relief based on Defendants' alleged
22 "unlawful sharing and accessing of private financial information and personal records, in
23 violation of" the RFPA and CalFIPA. FAC ¶ 1. Plaintiffs bring their claims against two groups
24 of Defendants: (1) two "Federal Government Defendants"—the United States Department of
25 Homeland Security and United States Immigration and Customs Enforcement, and (2) four
26 "Money Transfer Business Defendants" or "MTB Defendants"—Western Union Financial
27 Services, Inc., Continental Exchange Solutions, Inc. (D/B/A Ria Financial Services and AFEX
28 Money Express), DolEx Dollar Express, Inc., and Viamericas Corporation. FAC ¶¶ 1, 4-9.

1 **B. Plaintiffs Allege That Reporting Money Transfers in Response to Subpoenas**
 2 **Violates the Law.**

3 Plaintiffs claim that the Defendants have violated the RFPA and CalFIPA because they
 4 report money transfers to the Transaction Record Analysis Center (“TRAC”) in response to
 5 subpoenas issued by law enforcement, and the government has access to those reports. Plaintiffs
 6 allege that TRAC is a “collaboration of law enforcement agencies, including several federal
 7 government agencies.” FAC ¶ 13. Plaintiffs further allege that “TRAC is the nucleus of a
 8 state/federal Suspicious Transaction Report Project, which coordinates money laundering
 9 investigation and prosecutions . . .” *Id.* ¶ 27.

10 Plaintiffs allege that since at least 2014, TRAC has been “collecting and disseminating
 11 records” about “money transfers over \$300 sent to or from the Southwest border region” and,
 12 since at least 2015, “has been gathering and accessing” consumer records “about money transfers
 13 greater than \$500 sent to or from Arizona, California, New Mexico, Texas, or Mexico.” *Id.* ¶ 15.

14 Plaintiffs allege, without differentiating between any of the Defendants, that “Defendants .
 15 . . . devised a program [TRAC] to regularly collect, scrutinize, and share millions of financial
 16 records from unknowing consumers in the Southwest border states.” *Id.* As to all four “Money
 17 Transfer Business Defendants,” Plaintiffs allege that the “MTB Defendants were well aware that,
 18 by disclosing financial records to TRAC, they were also disclosing them to the federal
 19 government agencies participating in TRAC—even when data requests did not come directly
 20 from a federal government agency.” *Id.* ¶ 44.

21 In the same vein, without any attempt to tailor allegations specific to Viamericas,
 22 Plaintiffs broadly assert that all of the Money Transfer Defendants provide information to TRAC,
 23 and the “MTB Defendants” knew or should have known that TRAC then provides this
 24 information to federal agencies. *See id.* ¶¶ 15, 17, 32, 35, 42-48.

25 ///

26 ///

27 ///

28 ///

1 **C. Plaintiff Alegria Sued Viamericas Based on Its Money Transfer Business and**
 2 **Claimed Disclosures to TRAC in Response to Subpoenas.**

3 Plaintiff alleges that Viamericas is a Delaware company with its principal place of
 4 business in Bethesda, Maryland. FAC ¶ 8.¹ The FAC alleges, without any supporting facts, that
 5 Viamericas is a “consumer financial institution.” FAC ¶ 67. The FAC further alleges that the
 6 consumer services Viamericas provides include “money transfer, bill payment, check processing,
 7 and top-up services, including cash payout and direct deposits to bank accounts.” FAC ¶ 8.

8 While the FAC claims that Viamericas provides all these services, the FAC only focuses
 9 on Viamericas’ activities as a money transfer company. The FAC identifies one person, Plaintiff
 10 Alegria, as having used Viamericas’ money transfer services. *Id.* ¶ 54.

11 Moreover, while Plaintiffs make the broad allegation that Viamericas disclosed Plaintiff
 12 Alegria’s information to the federal government “without a valid warrant, subpoena, or court
 13 order,” FAC ¶ 54, the FAC makes clear that at issue is Viamericas’ claimed disclosures to TRAC
 14 as a money transfer company. *See, e.g.*, FAC ¶¶ 13, 15-17, 27-52.

15 That the allegations against Viamericas are premised on its activities as a money transfer
 16 business and its disclosures to TRAC are further shown by the following.

17 First, the FAC consistently refers to Viamericas as a money transfer company. When
 18 Viamericas is grouped with the other individual defendants, it is referenced as “Money Transfer
 19 Defendants” or “MTB Defendants” for short. That occurs dozens of times in the FAC. FAC ¶¶
 20 1, 14-15, 17, 24, 26, 38, 42-44, 48-49, 52, 58, 66-67, 69-72, 77, 79, 82-86, prayer for relief.

21 When the FAC references Viamericas’ activities, it does so in connection with
 22 Viamericas’ money transfer activities. Viamericas’ money transfer activities are what Plaintiff
 23 used. FAC ¶ 54. And all of the remaining allegations in the FAC relate to Viamericas’ money
 24 transfer activities. Indeed, Plaintiffs assert that Viamericas is liable because it reported
 25 information relating to money transfers. In Plaintiffs’ words, Viamericas reported to TRAC,
 26 which has been “collecting and disseminating records” about “*money transfers* over \$300 sent to
 27 or from the Southwest border region” and, since at last 2015, “has been gathering and accessing”
 28

¹ Effective February 1, 2023, Viamericas is headquartered in Coral Gables, Florida.

1 consumer records “about *money transfers* greater than \$500 sent to or from Arizona, California,
 2 New Mexico, Texas, or Mexico.” FAC ¶ 15 (emphasis added); *see also* FAC ¶ 32 (referencing
 3 Viamericas and noting that other money transfer companies were implicated); *id.*, ¶ 45
 4 (referencing fact that information was received from three money transfer companies and
 5 identifying Viamericas as one); *id.*, ¶ 46 (noting that Viamericas “like other money transfer
 6 companies”); *id.*, ¶ 70 (alleging that Viamericas provide personal information when sending
 7 money transfers).

8 Second, two paragraphs of the FAC assert that Viamericas knew it was reporting financial
 9 information to the federal government. Both paragraphs relate to Viamericas’ activities as a
 10 money transfer company. FAC ¶¶ 45-46. Both paragraphs relate to Viamericas’ claimed
 11 disclosures to TRAC.

12 Paragraph 45 alleges that on January 18, 2023, U.S. Senator Ron Wyden sent a letter to
 13 the Department of Justice relating to the *activities of three money transfer companies, including*
 14 *Viamericas*. According to the letter, these companies had delivered data to TRAC, and the data
 15 was delivered to TRAC ““in response to legal demands from HSI and other governmental
 16 entities.”” FAC ¶ 45 (quoting letter). Senator Wyden’s letter also stated that Viamericas received
 17 “legal demands” from other entities like the DEA, the FBI, and the Arizona Attorney General—
 18 but it did not state that any data was delivered to TRAC or any other entity in response to those
 19 demands. *Id.*

20 Paragraph 46 alleges that Viamericas, “like other *money transfer companies*,” knew that
 21 the federal government has access to TRAC. (emphasis added).

22 **D. Viamericas Produced Information Regarding Plaintiff Alegria Pursuant to**
 23 **Subpoenas Issued by the Attorney General of Arizona.**

24 Viamericas has only provided information about Plaintiff Alegria to a single third party—
 25 the Attorney General of Arizona. Declaration of Jaime Castaneda (“Castaneda Decl.”) filed
 26 concurrently herewith, ¶ 4.² Viamericas did so pursuant to subpoenas issued by the Attorney
 27

28 ² Because Viamericas is raising a subject matter jurisdiction argument pursuant to Federal Rule of
 Civil Procedure 12(b)(1), Viamericas is entitled to present evidence beyond the allegations of the
 pleadings. *See, e.g., Ass’n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778 (9th Cir. 2000).

1 General of Arizona. *Id.*, ¶ 4 & Ex. A. Citing to Arizona’s racketeering statutes, the subpoenas
 2 compelled the production of information in “a felony investigation.” Ex. A at 2. The subpoenas
 3 state that “failure to comply in full ... will subject [Viamericas] to the proceedings provided by
 4 A.R.S. Section 13-2315(B)”, including enforcement by the Arizona Attorney General. *Id.*

5 Viamericas produced the information in the manner and to the electronic location as
 6 directed by the Arizona Attorney General in the subpoenas. Castaneda Decl. ¶ 5. Viamericas
 7 understands that the electronic location to which the Attorney General and its agents identified in
 8 the subpoenas directed the information to be provided—a secure Virtual Private Network
 9 (“VPN”) address—was TRAC. Castaneda Decl. ¶ 6. Viamericas did not provide any
 10 information concerning Plaintiff Alegria to federal law enforcement. Castaneda Decl. ¶ 7.

11 **E. Plaintiffs Bring RFPA Claims Against All Defendants and CalFIPA Claims**
 12 **Against the Money Transfer Defendants.**

13 Based on TRAC’s alleged collection of money transfer records, Plaintiffs propose the
 14 following classes:

15 **Federal Defendants Class (All Plaintiffs):** All persons who sent or received a
 16 money transfer via any money transfer business and whose transaction data a
 17 federal government agency had access to or obtained copies of through TRAC
 since 2010.

18 **Western Union Subclass (Plaintiffs Sequeira and Cordero):** All persons who
 19 sent or received a money transfer via Western Union or any of its subsidiaries,
 and whose transaction data a federal government agency had access to or obtained
 copies of through TRAC since 2010.

20 **Continental Subclass (Plaintiff Alegria):** All persons who sent or received a
 21 money transfer via Continental, or any of its subsidiaries, and whose transaction
 data a federal government agency had access to or obtained copies of through
 22 TRAC since 2010.

23 **Viamericas Subclass (Plaintiff Alegria):** All persons who sent or received a
 24 money transfer via Viamericas or any of its subsidiaries, and whose transaction
 data a federal government agency had access to or obtained copies of through
 TRAC since 2010.

25 **DolEx Subclass (Plaintiff Alegria):** All persons who sent or received a money
 26 transfer via DolEx or any of its subsidiaries, and whose transaction data a federal
 government agency had access to or obtained copies of through TRAC since
 27 2010.

1 **California Subclass (All Plaintiffs):** All California residents who are a member
2 of the Western Union, Continental, Viamericas, or DolEx Subclasses.

3 FAC ¶ 56.

4 **ARGUMENT**

5 **I. PLAINTIFF’S RFP A CLAIM AGAINST VIAMERICAS (COUNT I) SHOULD BE**
6 **DISMISSED UNDER RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM.**

7 The FAC turns on Viamericas’ activities as a money transfer company. Money transfer
8 businesses like Viamericas are not subject to the RFP A’s notice requirements. Nor are the
9 allegations sufficient to conclude Viamericas is a “consumer finance institution” under the RFP A.

10 **A. A Money Transfer Company Is Not Subject to RFP A’s Notice Requirements.**

11 The RFP A imposes notice requirements for what it defines as a “financial institution.”
12 The provision imposing the requirement provides that “no [federal] Government authority may
13 have access to or obtain copies of, or the information contained in the financial records of
14 any customer from a financial institution unless” certain notice requirements are met. 12 U.S.C. §
15 3402.

16 However, Viamericas—a money transfer company—is not considered a financial
17 institution for the purposes of the RFP A’s notice requirements. Section 3401(1) of the RFP A
18 defines a “financial institution” as follows:

19 “financial institution”, except as provided in section 3414 of this title means any
20 office of a bank, savings bank, card issuer as defined in section 1602(n) of title 15,
21 industrial loan company, trust company, savings association, building and loan, or
22 homestead association (including cooperative banks), credit union, or consumer
23 finance institution, located in any State or territory of the United States, the District
24 of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

25 *Id.* § 3401(1).

26 Section 3401(1) makes no mention of money transfer companies. This is significant
27 because in other provisions of the RFP A that govern intelligence, counter-intelligence, and Secret
28 Service activities, “financial institutions” are expressly defined to include money transfer
29 companies. 12 U.S.C. § 3414. In cases involving those other activities not at issue in this case,
30 the definition of “financial institution” expands far beyond the reach of Section 3404(1). *See* 12
31 U.S.C. § 3414(e). For instance, under Section 3414(e), the definition of financial institution is

1 provided by 31 U.S.C. § 5312. Section 5312 defines “financial institution” to include a host of
2 entities, including a money transfer business: “a licensed sender of money or any
3 other person who engages as a business in the transmission of currency, funds, or value that
4 substitutes for currency.” 31 U.S.C. § 5312(a)(2)(R).

5 As a matter of statutory construction, the RFPA’s Section 3402 notice requirements
6 cannot apply to Viamericas. Congress is presumed to have excluded money transfer entities from
7 the scope of Section 3402’s notice requirements because when it *did* want to regulate money
8 transfer entities with respect to certain activities, it expressly included money transfer entities in
9 the definition of “financial institution.” See *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*,
10 566 U.S. 639, 645-46 (2012) (affirming the well-established canon of statutory interpretation that
11 the specific governs the general, “particularly when the two [statutory provisions] are interrelated
12 and closely positioned, both in fact being parts of [the same statutory scheme]”) (quoting *HCSC-*
13 *Laundry v. United States*, 450 U.S. 1, 6 (1981)).

14 **B. Viamericas Is Not a Consumer Finance Institution Under the RFPA.**

15 For the reasons stated above, Viamericas cannot be considered a consumer finance
16 institution. A consumer finance institution is enumerated as falling within the definition of
17 “financial institution” in Section 3401(1).

18 Plaintiffs do not allege facts to support the bald allegation that Viamericas is a consumer
19 finance institution. “The most salient feature of the [RFPA] is the narrow scope of the
20 entitlements it creates.” See *S.E.C. v. Jerry T. O’Brien, Inc.*, 467 U.S. 735, 745 (1984). The
21 RFPA “accords customers of banks *and similar financial institutions* certain rights to be notified
22 of and to challenge in court administrative subpoenas of financial records *in the possession of the*
23 *banks.*” *Id.* (emphasis added).

24 That the RFPA extends to banks and similar financial institutions, but not companies like
25 Viamericas, is reinforced by the decisions in *Commodity Futures Trading Comm’n v. Worth*
26 *Bullion Grp., Inc.*, 717 F.3d 545, 549-53 (7th Cir. 2013), and *F.T.C. v. Sterling Precious Metals,*
27 *LLC*, 2013 WL 1442180, at *2-5 (S.D. Fla. Apr. 9, 2013). In both cases, the courts limited the
28 extent of the RFPA’s notice requirements to institutions that provide consumer financing and

1 loans, which Viamericas is not alleged to offer at all.

2 In *Worth Bullion Grp., Inc.*, the court defined a “consumer finance institution” as one
 3 whose primary reason for existing “is to provide financing and cash loans to the general public.”
 4 717 F.3d at 551. That a company may engage in what might be broadly considered as financial
 5 transactions is not enough. It was not enough in *Worth Bullion* that a company bought and sold
 6 precious metals to retailers and customers. *Id.* at 547, 549-51. According to the court, expanding
 7 the reach of the RFPA to those companies would run counter to the definition of “financial
 8 institution,” which clearly limited itself more narrowly to entities that acted as a bank would by
 9 providing consumer financing and loans. *Id.* at 550-51.

10 The court in *Sterling* reached a similar conclusion. There the court concluded a company
 11 could not be considered a “consumer finance institution” unless “a core aspect” of its business
 12 was consumer “financing.” 2013 WL 1442180, at *5.³

13 Plaintiffs do not—and cannot—allege that Viamericas provides consumer financing or
 14 loans at all, let alone as its primary reason for existing or its core business offering to consumers.
 15 Viamericas is therefore not a “consumer finance institution.” Taking Plaintiffs at their word,
 16 Viamericas provides “money transfer, bill payment, check processing, and top-up services,
 17 including cash payout and direct deposits to bank accounts.” FAC ¶ 8. For this reason, the RFPA
 18 claim against Viamericas should be dismissed.

19 **II. PLAINTIFF’S RFPA CLAIM AGAINST VIAMERICAS (COUNT I) SHOULD BE**
 20 **DISMISSED UNDER RULE 12(B)(1) BECAUSE PLAINTIFF ALEGRIA LACKS**
 21 **ARTICLE III STANDING.**

22 Plaintiff Alegria’s RFPA claim against Viamericas should be dismissed for lack of
 23 standing.

24 “At least one named plaintiff must have standing with respect to each claim that the class
 25 representatives seek to bring” against each defendant. *Greenstein v. Noblr Reciprocal Exch.*, 585

26 ³ These holdings are consistent with other courts’ treatment of the scope of the RFPA. *See, e.g.,*
 27 *Young v. Union*, 2012 WL 12844773, at *7 (N.D. Cal. Aug. 29, 2012), *aff’d sub nom. Young v.*
 28 *Trans Union*, 616 F. App’x 301 (9th Cir. 2015) (VISA is not a “card issuer” under the RFPA but
 is instead an “acquirer and issuer [that] banks contract with [] for access to the VISA network”)
 (citations omitted); *Walker v. S.W.I.F.T. SCRL*, 491 F. Supp. 2d 781, 792-93 (N.D. Ill. 2007) (a
 “supplier of messaging services to financial institutions” is not covered by section 3401(1)).

1 F. Supp. 3d 1220, 1226 (N.D. Cal. 2022); *see also Henry v. Circus Casinos, Inc.*, 223 F.R.D. 541,
 2 544 (D. Nev. 2004) (to establish standing, for “every named defendant there [must] be at least one
 3 named plaintiff who can assert a claim directly against that defendant”).

4 Here, the only reason that Viamericas is named in this lawsuit is because Plaintiff Alegria
 5 alleges that Viamericas “shared with the federal government without a valid warrant, subpoena,
 6 or court order” transactions relating to him. FAC ¶ 54. Plaintiff Alegria, the only named plaintiff
 7 who alleges to have used Viamericas’ services, *see* FAC ¶¶ 53-55, lacks standing for the RFPA
 8 claim because he cannot show either (1) “a causal connection between the injury and the conduct
 9 complained of—the injury has to be ‘fairly ... trace[able] to the challenged action of the
 10 defendant, and not ... th[e] result [of] the independent action of some third party not before the
 11 court’”; or (2) that “it must be ‘likely’, as opposed to merely ‘speculative’, that the injury will be
 12 ‘redressed by a favorable decision.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)
 13 (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41-42, 43 (1976)).

14 **A. No Causal Connection Exists Between Viamericas’ Alleged Conduct and Any**
 15 **Injury to Mr. Alegria.**

16 Plaintiff Alegria alleges that he was injured as a result of the production of his information
 17 to the federal government. But Viamericas has only ever produced documents about Plaintiff
 18 Alegria in response to a subpoena from the State of Arizona. *See* Statement of Facts, Section D;
 19 Castaneda Decl. ¶¶ 5-7.⁴ There is no causal connection between Plaintiff Alegria’s injury and
 20 Viamerica’s conduct.

21 According to the FAC, Viamericas’ production of information violated the RFPA because
 22 the federal government ultimately accessed the information after Viamericas’ production.
 23 Plaintiff Alegria alleges that, as a result, *Viamericas* violated the RFPA because the federal
 24 government did not provide Plaintiff Alegria with notice *prior to* when Viamericas complied with
 25

26 ⁴ “In a factual challenge” to a plaintiff’s standing, “the challenger disputes the truth of the
 27 allegations [in the complaint] that, by themselves, would otherwise invoke federal jurisdiction”
 28 and thus “the district court may review evidence beyond the complaint without converting
 the Rule 12(b)(1) motion to dismiss into a motion for summary judgment.” *Anderson v. Seliger*,
 2020 WL 1139647, at * 3 (N.D. Cal. Mar. 9, 2020) (quoting *Safe Air for Everyone v. Meyer*, 373
 F.3d 1035, 1039 (9th Cir. 2004)).

1 the Arizona state subpoena. *See* FAC ¶¶ 54, 75 (the RFPA violation occurred because “[a]t no
2 point did the Federal Government Defendants . . . provide Plaintiffs or . . . Viamericas . . . with
3 notice and information about how to object to the disclosure of their financial records as required
4 under the RFPA”).

5 However, Viamericas had a legal duty to comply with the Arizona state subpoena, and
6 that duty is not impacted in any way by the RFPA. Regardless of whether or not the federal
7 government provided notice, the RFPA does not govern state subpoenas. *See, e.g., Rosiere v.*
8 *U.S. S.E.C.*, 2010 WL 419440, at *1 (D. Nev. Jan. 29, 2010) (“By its own terms, the RFPA does
9 not apply to the subpoena served by the State of Florida’s Office of Financial Regulation because
10 it is not an agency or department of the United States’ government.”); *United States v.*
11 *Zimmerman*, 957 F. Supp. 94, 96 (N.D.W. Va. 1997) (“the Right to Financial Privacy Act does
12 not apply to requests for information from state and local governmental agencies, and thus, is not
13 applicable to the facts of this case”).⁵

14 Here, Plaintiff Alegria failed to allege an injury that can be traced to Viamericas.
15 Viamericas’ only conduct was the production of information to the State of Arizona, as it was
16 required to do. To the extent that, after production to the State of Arizona, Plaintiff Alegria’s
17 information was later accessed by the federal government resulting in Mr. Alegria’s alleged
18 injury, his injury results from “the independent action of some third party” and not Viamericas.
19 *See Lujan*, 504 U.S. at 560.

20 **B. The Prayer for Injunctive Relief Will Not Redress Plaintiff Alegria’s Alleged**
21 **Injury.**

22 To redress his alleged injury, Mr. Alegria seeks to “[e]njoin [Viamericas] from continuing
23 to provide access to or copies of [his] consumer financial information to a federal government
24 agency through TRAC or otherwise without complying with RFPA.” FAC “Prayer for Relief,”
25 ¶ (d). This relief, however, would not redress Mr. Alegria’s alleged injury because Viamericas
26 must still comply with a state subpoena even if Viamericas is directed to comply with the RFPA.

27 _____
28 ⁵ Indeed, the FAC places Viamericas in an untenable position. Under Plaintiffs’ unsound logic,
Viamericas either complies with a state subpoena and violates federal law, or it refuses to comply
with a state subpoena and thus violates state law.

1 See *Rosiere*, 2010 WL 419440, at *1; *Zimmerman*, 957 F. Supp. at 96.

2 **III. PLAINTIFF’S UCL CLAIM AGAINST VIAMERICAS (COUNT II) SHOULD BE**
 3 **DISMISSED FOR FAILURE TO STATE A CLAIM.**

4 Plaintiffs’ sole basis for alleging a violation of Business and Professions Code section
 5 17200 is that Viamericas’ actions were “unlawful.” FAC ¶ 79. To state a claim under the
 6 “unlawful” prong of the UCL, a plaintiff must plead, among other things, a predicate violation of
 7 a federal or California “statute or regulation.” *Shaeffer v. Califia Farms, LLC*, 258 Cal. Rptr. 3d
 8 270, 277 (Cal. Ct. App. 2020) (citation omitted); *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d
 9 1152, 1168 (9th Cir. 2012) (“[S]ection 17200 borrows violations of other laws and treats them as
 10 unlawful practices that the unfair competition law makes independently actionable.”) (quoting
 11 *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999)); *see also*
 12 *Eidmann v. Walgreen Co.*, 522 F. Supp. 3d 634, 647 (N.D. Cal. 2021) (“[I]f the plaintiff cannot
 13 state a claim under the predicate law . . . [the UCL] claim also fails.”) (internal citations omitted);
 14 *In re Actimmune Mktg. Litig.*, 2009 WL 3740648, at *15 (N.D. Cal. Nov. 6, 2009) (“Under its
 15 ‘unlawful’ prong, the UCL borrows violations of other laws ... and makes those unlawful
 16 practices actionable under the UCL”), *aff’d*, 464 F. App’x 651 (9th Cir. 2011) (internal citations
 17 omitted).

18 There is no unlawful conduct to support a Section 17200 claim against Viamericas. For
 19 the reasons set forth above, Plaintiffs have failed to state a claim that Viamericas violated the
 20 RFPA. *See supra* Section I. Furthermore, Plaintiffs cannot state a claim under CalFIPA because
 21 it provides two exceptions that apply and protect Viamericas against Plaintiff Alegria’s claims.

22 First, CalFIPA permits disclosure made “to law enforcement agencies . . . or for an
 23 investigation on a matter related to public safety.” Cal. Fin. Code § 4056(b)(5). This exception
 24 applies because Plaintiffs specifically allege that “TRAC is the nucleus of a state/federal
 25 Suspicious Transaction Report Project, which coordinates money laundering investigation and
 26 prosecutions.” FAC ¶ 27. The disclosures also are made for an investigation on “a matter related
 27 to public safety,” Cal. Fin. Code § 4056(b)(5), because money laundering is a criminal offense
 28 that implicates public safety. *See United States v. McKnight*, 2020 WL 1872412, at *2 (W.D.

1 Wash. Apr. 15, 2020) (finding that a defendant charged with “money laundering” may be a
 2 “flight risk or threat to public safety”); *United States v. Santos*, 553 U.S. 507, 536 (2008) (Alito,
 3 J., dissenting) (a “money laundering statute” should be construed to protect “public safety”).
 4 Plaintiffs’ own pleading therefore places the alleged conduct squarely within CalFIPA’s
 5 exceptions.⁶

6 Second, disclosure is allowed under CalFIPA where necessary “to comply with federal,
 7 state ... and other applicable legal requirements” or “a properly authorized civil, criminal,
 8 administrative, or regulatory investigation or subpoena or summons by federal, state, or local
 9 authorities” Cal. Fin. Code § 4056(b)(7). Here, the only disclosures relating to Plaintiff
 10 Alegria were in response to subpoenas from the Attorney General of Arizona. *See* Statement of
 11 Facts, Section D. Viamericas’ production thus plainly falls within CalFIPA’s exception allowing
 12 disclosure when doing so is necessary “to comply with state ... and other applicable legal
 13 requirements” or “a properly authorized ... subpoena ... by ... state... authorities” Cal. Fin.
 14 Code § 4056(b)(7).

15 Even if the conduct that Plaintiffs allege Viamericas took is covered by CalFIPA section
 16 4052.5, it falls within these exceptions. For these reasons, Plaintiffs have failed to state a valid
 17 claim under the California Unfair Competition law and the claim should be dismissed.

18 CONCLUSION

19 For the above reasons, Viamericas respectfully asks the Court to grant its motion to
 20 dismiss without leave to amend.

21 Dated: March 3, 2023

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 Viamericas Corporation

27 ⁶ Plaintiffs make the broad allegation that Viamericas shared Plaintiff Alegria’s information
 28 “without a valid warrant, subpoena, or court order.” FAC ¶ 54. However, this allegation is
 conclusory and must be read in the context of the remainder of the complaint, which only seeks to
 hold Viamericas liable for disclosure to TRAC. *See, e.g.*, FAC ¶¶ 13, 15-17, 27-52.