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

17 NELSON SEQUEIRA, ORSAY ALEGRIA, and
18 ISMAEL CORDERO, individually and on
19 behalf 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

**DEFENDANT WESTERN UNION
FINANCIAL SERVICES, INC.'S NOTICE
OF MOTION AND MOTION TO
DISMISS AMENDED COMPLAINT**

Date: May 18, 2023

Time: 2:00 PM

Place: Courtroom 2, 4th Floor, Oakland

Judge: Honorable Haywood S. Gilliam, Jr.

Amended Complaint Filed: January 24, 2023

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 18, 2023, at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom No. 2 of the above entitled Court, located at 1301 Clay Street, Oakland, CA 94612, before the Honorable Haywood S. Gilliam, Jr., Defendant Western Union Financial Services, Inc. (“Western Union”) will and hereby does move the Court for an order dismissing with prejudice the First Amended Class Action Complaint (“Amended Complaint” or “Am. Compl.”) (ECF No. 38).

Western Union moves to dismiss both causes of action: Count One, for alleged violations of the Right to Financial Privacy Act, 12 U.S.C. §§ 3401 *et seq.*, and Count Two, for alleged violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* Western Union makes this motion pursuant to Federal Rule of Civil Procedure 12(b)(6) because the Amended Complaint fails to state a claim upon which relief can be granted.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Request of Judicial Notice and Consideration of Documents Incorporated by Reference, the Declaration of Sheila A.G. Armbrust and attached exhibits, the record in this action, and any oral argument permitted by the Court.

Dated: March 3, 2023

Respectfully submitted,

/s/ Hille R. Sheppard

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Western Union Financial Services, Inc.

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4 *Transfers Between U.S. and More than 20 Countries*, WALL STREET JOURNAL,
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6 Department of Justice, *Criminal Resource Manual*, WWW.JUSTICE.GOV (last updated
7 Jan. 22, 2020)7

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiffs bring this lawsuit against Western Union, three other money transfer businesses, and two federal government defendants based on novel, infirm legal theories that have not been adopted by any court in the country. Plaintiffs ask this Court to impose liability on Western Union for producing money transfer records to law enforcement without advance notice to its customers—even where Western Union did so to comply with court orders and compulsory administrative subpoenas from law enforcement. Plaintiffs’ theories under the federal Right to Financial Privacy Act (“RFPA”) and under the California Unfair Competition Law (“UCL”) and California Financial Information Privacy Act (“Cal. FIPA”) both fail to state a claim for relief.

The Supreme Court has held that the “most salient feature” of the RFPA is “the narrow scope of the entitlements it creates.” *S.E.C. v. Jerry T. O’Brien, Inc.*, 467 U.S. 735, 745 (1984). Yet, in Count One, Plaintiffs ask this Court to extend the reach of the RFPA to hold Western Union liable for producing money transfer records to state and federal law enforcement pursuant to court orders and compulsory administrative subpoenas. This claim fails because money transfer businesses fall outside the narrow reach of the RFPA. To hold otherwise would contort the clear intent of Congress. Further, under its express terms, the RFPA does not extend to any of Western Union’s productions to the State of Arizona.

Both of Plaintiffs’ claims are barred because Western Union’s production of money transfer records pursuant to court orders and compulsory administrative subpoenas are protected by a safe harbor in the Bank Secrecy Act (“BSA”).

Count Two also fails for two additional reasons. First, Plaintiffs lack standing to bring a claim for unlawful conduct under the UCL where Cal. FIPA contains no private right of action. Second, enumerated exceptions to Cal. FIPA permitted Western Union to produce money transfer records without consumer notice in order to abide by court orders and comply with compulsory administrative subpoenas from law enforcement.

Western Union’s productions of money transfer records to law enforcement, as alleged by

1 Plaintiffs, do not give rise to causes of action under either federal or state law. Because it does not
2 state a claim, the Amended Complaint should be dismissed with prejudice.¹

3 **II. BACKGROUND**

4 Western Union is incorporated and headquartered in the State of Colorado. Am. Compl. ¶ 6.
5 As Plaintiffs allege, companies like Western Union provide an important service “enabling people to
6 send and receive money across borders.” *Id.* ¶ 22. Money transfers, as alleged in the Amended
7 Complaint, involve transfers of money between two individuals:

8 To effectuate a money transfer, a sender typically brings cash to a
9 money transfer business’s brick and mortar location. A business
10 representative will receive the cash and arrange for a transfer to the
11 location specified by the sender. Once the transaction is processed, the
12 beneficiary or recipient of the transfer need only visit the appropriate
branch of a money transfer business, where the money is delivered to
them.

13 *Id.* ¶ 23. The Amended Complaint states that Plaintiffs Sequeira and Cordero each used Western
14 Union’s money transfer services to send money to “family abroad.” *Id.* ¶¶ 53, 55.

15 Plaintiffs’ claims against Western Union involve two distinct time periods during which
16 Western Union was required to produce money transfer records: first, the period from 2010 through
17 June 30, 2019, when Western Union produced records to the State of Arizona pursuant to court
18 orders; and second, the time period from July 1, 2019 through 2022, when Western Union produced
19 records pursuant to compulsory customs summonses, a type of administrative subpoena, issued by a
20 federal law enforcement agency, Homeland Security Investigations (“HSI”), which is part of the
21 Department of Homeland Security (“DHS”).

22 **A. From 2010 Until 2019, Western Union Was Required To Produce Records**
23 **Under A Court-Ordered Settlement Agreement And Monitorship.**

24 First, Plaintiffs allege that, between 2010 and 2019, Western Union produced money transfer
25

26 ¹ Western Union also is evaluating bringing a motion to compel arbitration because the terms and
27 conditions governing its money transfer services contain an arbitration clause. Western Union
28 currently lacks key identifying information about Plaintiffs Sequeira and Cordero, the two Plaintiffs
who allege they sent money via Western Union. Western Union has issued limited discovery
requests to Plaintiffs Sequeira and Cordero to obtain this information and is awaiting their responses.

1 records to the State of Arizona pursuant to an “agreement” between Western Union and the Arizona
2 Attorney General. Am. Compl. ¶¶ 28-33. Plaintiffs allege that these money transfer records
3 ultimately were shared with the Arizona Financial Crimes Task Force (“AZFCTF”) through its
4 Transaction Record Analysis Center (“TRAC”). *See id.* ¶¶ 28-29, 48. Plaintiffs allege TRAC was
5 founded in 2014 and composed of the Arizona Attorney General’s Office, the Phoenix Police
6 Department, and the Arizona Department of Public Safety. *See id.* ¶¶ 28-29, 48. Plaintiffs further
7 allege that, by 2017, TRAC had a “close relationship” with HSI. *Id.* ¶ 30.

8 Western Union’s production of money transfer records to Arizona followed years of
9 litigation that resulted in a court-ordered settlement agreement and monitorship that required
10 Western Union to produce the records. Specifically, in 2006, the Arizona Attorney General
11 attempted to obtain money transfer records from Western Union by “serving [the company] with a
12 warrant for data regarding every person-to-person transaction over \$500 ... sent from multiple states
13 to Sonora, Mexico.” *Id.* ¶ 27. Western Union vehemently opposed this attempt, litigating the issue
14 all the way to the Arizona Supreme Court. *Id.* In February 2010, the Arizona Attorney General and
15 Western Union entered the “agreement” cited by Plaintiffs, which was a lengthy settlement
16 agreement (the “Arizona Settlement Agreement”). *See id.* ¶ 28; Armbrust Decl., Ex. A² (Arizona
17 Settlement Agreement); Armbrust Decl., Ex. B (2010 Arizona Court Order).

18 The Arizona Settlement Agreement was approved in full in a February 24, 2010 order
19 (“2010 Arizona Court Order”) by the Superior Court of the State of Arizona in and for the County of
20 Maricopa (the “Arizona Court”). Armbrust Decl., Ex. B at 6. The Arizona Court ordered the
21 appointment of an independent Monitor. *Id.* at 4.

22 The Arizona Court also ordered Western Union to turn over certain money transfer records to
23 the State of Arizona and certain other states in the Southwest Border Area,³ and to do so in an

24 _____
25 ² The exhibits attached to the Declaration of Sheila A.G. Armbrust are judicially noticeable and
26 incorporated by reference. *See* Defendant Western Union Financial Services, Inc.’s Request for
27 Judicial Notice and Consideration of Documents Incorporated by Reference in Support of Motion to
28 Dismiss Amended Complaint, filed concurrently herewith.

³ The 2010 Settlement Agreement defines the Southwest Border Area to be all of Arizona and the
area within 200 miles north and south of the United States/Mexico border, which includes portions
of California, New Mexico, Texas, and Mexico. Armbrust Decl., Ex. A at 2.

1 ongoing manner through the term of the Monitor’s engagement. Specifically, the 2010 Arizona
2 Court Order required:

3 TURN OVER TO MONITOR AND STATES. IT IS FURTHER
4 ORDERED that Western Union, upon service of this Order upon them,
5 shall deliver to the Monitor ... and to the State, the materials described
6 in ... the Agreement and the data described in ... the Monitor
7 Engagement Letter implementing the Agreement, which includes full
8 transaction data relating to all person-to-person transactions sent to or
from authorized delegate/Agent locations within the Southwest Border
Area from January 1, 2005, to the present and throughout the term of
the Monitor’s Engagement involving transactions in amounts of \$500
or more.

9 *Id.* at 7; *see also* Am. Compl. ¶ 28 (discussing settlement agreement and Arizona Attorney General’s
10 “intent to share the data produced by Western Union with other state and federal law enforcement
11 officials”). The Arizona Settlement Agreement, which incorporated a Monitor engagement letter,
12 required Western Union to produce the money transfer records discussed above. Armbrust Decl.,
13 Ex. A at 6 (Arizona Settlement Agreement ¶ 17.1) and 35 (Monitorship Engagement Letter ¶ 32.5);
14 Am. Compl. ¶ 28.

15 In January 2014, the Arizona Attorney General’s Office, in coordination with other Arizona
16 state agencies, “expanded the existing [settlement] agreement with Western Union” and at that time
17 founded TRAC. Am. Compl. ¶ 29. On January 31, 2014, the Arizona Court approved an amendment
18 to the Arizona Settlement Agreement and ordered Western Union to continue producing to Arizona
19 the specified money transfer records for another five years, until January 30, 2019. Armbrust Decl.,
20 Ex. C at 4 (Jan. 2014 Arizona Court Order); Armbrust Decl., Ex. D at 19 (Jan. 2014 Settlement
21 Amendment, ¶ 17.1.6). On October 17, 2014, the Arizona Court ordered Western Union to continue
22 producing to Arizona the specified money transfer records until June 30, 2019. Armbrust Decl.,
23 Ex. E (Oct. 2014 Arizona Court Order). Nearly five years later, the Arizona Court held that Western
24 Union’s obligations to produce money transfer records to Arizona would expire as of June 30, 2019.
25 *See* Am. Compl. ¶ 34; Armbrust Decl., Ex. F (2019 Arizona Court Order).

26 **B. From 2019 Through 2022, Western Union Was Required To Produce Records**
27 **Pursuant To Compulsory Customs Summonses.**

28 Second, Plaintiffs allege that, in 2019, federal agents from DHS “stepped in to try to fill the

1 void left by the expiration of the Arizona Attorney General’s agreement with Western Union.”
 2 Am. Compl. ¶ 35. According to Plaintiffs, “the HSI Special Agent in charge of Phoenix began
 3 issuing a series of requests to Western Union every six months directing the company to continue
 4 transmitting records of money transfers to TRAC.” *Id.* ¶ 35. Plaintiffs acknowledge that the
 5 “requests” that HSI “issued” were “customs summons.” *Id.* ¶¶ 35, 46; Armbrust Decl., Ex. H
 6 (describing HSI issuance of “customs summons” every six months); *see also* 19 U.S.C. § 1509(a)(2)
 7 (providing authority for customs summons).

8 Plaintiffs filed this lawsuit after “press reports” from “earlier this year” “exposed” what they
 9 call an “unlawful surveillance program.” Am. Compl. ¶¶ 1, 13. These reports followed Senator Ron
 10 Wyden’s March 8, 2022 letter to the Inspector General of DHS (the “2022 Wyden Letter”), which
 11 raised concerns about “HSI’s bulk data collection program” through which HSI used “customs
 12 summons” to obtain money transfer records, including from Western Union. *See id.* ¶¶ 34, 42;
 13 Armbrust Decl., Ex. H (2022 Wyden Letter).

14 As Plaintiffs allege, on January 18, 2023, Senator Wyden sent another letter to the
 15 United States Department of Justice Inspector General (“2023 Wyden Letter”). Am. Compl. ¶ 45
 16 Senator Wyden wrote: “In a February 18, 2022, briefing, senior HSI personnel informed my office
 17 that HSI had issued customs summonses, starting in July 2019, to Western Union[.]” Armbrust
 18 Decl., Ex. G at 2; *see also* Am. Compl. ¶ 46 (quoting a January 18, 2023 Wall Street Journal article
 19 describing customs summonses).⁴ Plaintiffs allege that “the HSI custom summonses requested that
 20 the data at issue be delivered to TRAC.” Am. Compl. ¶ 46.

21 Plaintiffs allege that “HSI’s bulk data collection was continuous and extensive until 2022
 22 when Senator Ron Wyden raised concerns about the program, ultimately resulting in a suspension of
 23 HSI’s role in requesting the data in question from Western Union.” *Id.* ¶ 42; *see also* Armbrust
 24

25 ⁴ The article states: “Mr. Wyden determined last year that the federal government participated in
 26 TRAC, and specifically that Homeland Security Investigations ... used customs summonses, a type
 27 of subpoena, to collect about six million records from Western Union ... since 2019.” Dustin Volz
 28 and Bryan Tau, *Little-Known Surveillance Program Captures Money Transfers Between U.S. and
 More Than 20 Countries*, THE WALL STREET JOURNAL, Jan. 18, 2023,
[https://www.wsj.com/articles/little-known-surveillance-program-captures-money-transfers-between-
 u-s-and-more-than-20-countries-11674019904](https://www.wsj.com/articles/little-known-surveillance-program-captures-money-transfers-between-u-s-and-more-than-20-countries-11674019904).

1 Decl., Ex. H at 2 (2022 Wyden Letter) (“After my staff contacted HSI about the program in January
2 2022, HSI immediately terminated the program.”).

3 Plaintiffs do not allege that Western Union produced any records to TRAC that were not
4 compelled by the Arizona Court Orders⁵ or the HSI customs summonses.

5 **III. LEGAL STANDARD**

6 Dismissal is appropriate under Rule 12(b)(6) when a claimant’s allegations fail “to state a
7 claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a
8 complaint “must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is
9 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible “when the
10 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
11 defendant is liable for the misconduct alleged.” *Id.* In making this determination, “courts are not
12 bound to accept as true a legal conclusion couched as a factual allegation.” *Bell Atl. Corp. v.*
13 *Twombly*, 550 U.S. 544, 555 (2007) (internal quotes and citation omitted). Facts subject to judicial
14 notice may be considered on a motion to dismiss, and the doctrine of incorporation by reference
15 permits a district court to consider documents “whose contents are alleged in a complaint and whose
16 authenticity no party questions, but which are not physically attached to ... the pleadings.” *Al-Ahmed*
17 *v. Twitter, Inc.*, 603 F. Supp. 3d 857, 866 (N.D. Cal. 2022).

18 **IV. ARGUMENT**

19 **A. Count One Should Be Dismissed Because The RFPA Does Not Apply To** 20 **Western Union.**

21 **1. Western Union Is Not A “Financial Institution” As That Term Is Defined** 22 **In The RFPA.**

23 No court has ever held that money transfer businesses are subject to the consumer notice
24 requirements of the RFPA. And for good reason: money transfer businesses are not included in the
25 list of “financial institutions” covered by the RFPA.⁶ The RFPA defines the term “financial
26 institution” as follows:

26 ⁵ “Arizona Court Orders” refers collectively to the 2010, 2014, and 2019 Arizona Court Orders
27 defined above.

28 ⁶ Indeed, a now-archived 2020 version of the Department of Justice’s *Criminal Resource Manual*
expressly states, “Institutions not covered by the [RFPA] include ... Western Union.” Department of

1 [E]xcept as provided in section 3414 of this title, [“financial
 2 institution”] means any office of a bank, savings bank, card issuer as
 3 defined in section 1602(n) [1] of title 15, industrial loan company, trust
 4 company, savings association, building and loan, or homestead
 5 association (including cooperative banks), credit union, or consumer
 finance institution, located in any State or territory of the United States,
 the District of Columbia, Puerto Rico, Guam, American Samoa, or the
 Virgin Islands[.]

6 12 U.S.C. § 3401(1).

7 The money transfer activities alleged by Plaintiffs (*see* Am. Compl. ¶¶ 22-23) plainly do not
 8 qualify Western Union as a “bank,” “savings bank,” “savings association,” “credit union,” or any
 9 enumerated bank-like entity described in Section 3401(1). Plaintiffs do not contend otherwise;
 10 indeed, they even assert that “[m]any money transfer consumers are unbanked.” Am. Compl. ¶ 25.
 11 Rather, Plaintiffs appear to claim that Western Union comes within the RFPA’s definition because it
 12 is a “consumer finance institution.” Am. Compl. ¶¶ 14, 67. Plaintiffs are wrong.

13 The Seventh Circuit, the only circuit court to address the RFPA’s definition of “consumer
 14 finance institution,” has held that this term cannot be construed to include businesses that do not
 15 provide financing as a core part of their business. *Commodity Futures Trading Comm’n v. Worth*
 16 *Bullion Grp., Inc.*, 717 F.3d 545, 551-52 (7th Cir. 2013). In *Worth*, the government served
 17 administrative subpoenas on three companies that conduct business in the precious metals market.
 18 *Id.* at 546-47. Because the government had not complied with the RFPA’s notice requirements, and
 19 because the companies asserted they were “consumer finance institutions” as that term is used in the
 20 RFPA, the companies redacted customer information from their productions and thus failed to
 21 comply in full with the subpoenas. *Id.* at 548-49. Both the district court and the Seventh Circuit
 22 rejected this position, concluding that the RFPA did not apply to the companies because they were
 23 not “consumer finance institutions” under the RFPA. *Id.* at 551. In giving meaning to the term
 24 “consumer finance institution,” *Worth* evaluated the list of entities included in the RFPA’s definition

25 _____
 Justice, *Criminal Resource Manual*, WWW.JUSTICE.GOV,
 26 <https://www.justice.gov/archives/jm/criminal-resource-manual-402-financial-institutions-covered>
 (last updated Jan. 22, 2020). Additionally, in the letters that appear to have prompted this lawsuit,
 27 Senator Wyden made clear his understanding that the RFPA does not apply to money transfer
 28 businesses, repeating in each of his letters: “money transfer businesses are not subject to the same
 protections as bank-based transactions under the [RFPA].” Armbrust Decl., Exs. G and H.

1 of “financial institution,” holding that “all of the referenced entities surrounding the phrase
 2 ‘consumer finance institution’ ... considerably convey more than a tangential or secondary
 3 relationship to the field of financing. Rather, a primary reason each of these entities exists is to
 4 provide financing and cash loans to the general public, making these services a core function and
 5 purpose of such businesses.” *Id.* at 551-52. The Seventh Circuit held that the RFPA did not apply to
 6 the precious metals companies because, even though two of the companies (a wholesaler and
 7 retailer) regularly extended financing to their customers to purchase precious metals, “the provision
 8 of financing is not a defining characteristic of appellants’ business; rather, it is merely a means to an
 9 end, the real or primary goal of the transaction being a sale of precious metals.” *Id.* at 551.

10 Here, just as in *Worth*, “the provision of financing is not a defining characteristic” of
 11 Western Union’s business. To the contrary, Plaintiffs’ allegations focus entirely on the provision of
 12 money transfer services, which do not involve loans or any sort of financing at all. Plaintiffs do not
 13 plausibly allege that Western Union carries out any lending or financing activities.⁷ Notably,
 14 Plaintiffs do not allege that Western Union had any license to engage in lending, and indeed
 15 Western Union’s license to do business in California makes clear that it is licensed solely as a money
 16 transmitter. See <https://dfpi.ca.gov/2018/03/15/western-union-financial-services-inc/>. Thus, Western
 17 Union is not a consumer finance institution as that term is used in the RFPA.

18 *Worth* also forecloses any argument that the broader definition of “financial institution” in
 19 the Bank Secrecy Act (“BSA”) should apply to Plaintiffs’ claims. Section 3401(1) of the RFPA
 20 contains an express exception that makes clear that the RFPA’s general definition of “financial
 21 institution” does not apply to the provision of the RFPA that addresses counterintelligence,
 22

23 ⁷ The Amended Complaint contains one conclusory assertion that Western Union provides “lending
 24 services,” Am. Comp. ¶ 6, but “naked assertion[s] devoid of further factual enhancement” are
 25 insufficient at the pleading stage. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). Apart
 26 from this one stray and unexplained assertion that Western Union engages in lending, the Amended
 27 Complaint is solely focused on Western Union’s money transfer services, both in general discussion
 28 about person-to-person transactions and in relation to Plaintiffs’ allegations. In fact, it repeatedly
 refers to Western Union and the other non-government defendants as the “Money Transfer Business
 Defendants” or “MTB Defendants.” See, e.g., Am. Compl. ¶¶ 6, 27, 32, 35, 53, and 55. Further,
 Plaintiffs Sequeira and Cordero each allege that they “used Western Union to send money ... to ...
 family abroad.” *Id.* ¶¶ 53, 55. They fail to allege that any Plaintiff used Western Union for lending
 services, or that lending services have any relationship to this litigation.

1 terrorism, and Secret Service investigations. 12 U.S.C. § 3414(a). In Section 3414, Congress
 2 expressly incorporated a different, broader definition of the term “financial institution” from the
 3 BSA. 31 U.S.C. § 5312. The BSA defines “financial institution” to embrace an unusually wide range
 4 of actors—including money transfer businesses. *See id.* § 5312(a)(2)(R). Thus, Congress chose to
 5 make money transfer businesses subject to only one, narrow provision of the RFPA (applicable only
 6 to intelligence and national security investigations), and not the rest of the statute. *Worth* reasoned
 7 that the RFPA incorporates the BSA’s definition of “financial institution” only for
 8 counterintelligence, terrorism, and Secret Service investigations, and thus there is no basis for
 9 applying this broader definition to investigations outside of that narrow scope. 717 F. 3d at 552-53.
 10 The Court should give effect to that policy choice in narrowly interpreting the term “financial
 11 institution” as applied to Plaintiffs’ claims. *See, e.g., Salinas v. United States R.R. Ret. Bd.*, 141
 12 S. Ct. 691, 698 (2021) (“Where Congress includes particular language in one section of a statute but
 13 omits it in another section of the same Act, it is generally presumed that Congress acts intentionally
 14 and purposely in the disparate inclusion or exclusion.”).

15 Plaintiffs have not plausibly alleged that Western Union is a “financial institution” or a
 16 “consumer finance institution” within the meaning of Section 3401 of the RFPA. Because the RFPA
 17 therefore does not apply to Western Union, Count One should be dismissed.

18 **2. Productions To The State Of Arizona Are Not Covered By The RFPA**
 19 **Because Arizona Is Not A “Government Authority” Under The RFPA.**

20 Count One also fails to the extent it relies on productions to the State of Arizona, which
 21 Plaintiffs allege Western Union made from 2010 through the first half of 2019. Am. Compl. ¶¶ 28-
 22 34. This is because productions to a State—not to a federal authority—are not covered by the RFPA.
 23 The RFPA applies only to “Government authority” access to or receipt of records from financial
 24 institutions. 12 U.S.C. § 3402. “Government authority” is defined to include only the federal
 25 government: “any agency or department of the United States, or any officer, employee, or agent
 26 thereof[.]” 12 U.S.C. § 3401(3). Plainly, the State of Arizona is not a “Government authority” within
 27 the meaning of the RFPA.

28 Plaintiffs do not allege that Western Union produced any records directly to Government

1 authorities as that phrase is defined in the RFPA—*i.e.*, *federal government authorities*—until 2019.⁸
 2 Although Plaintiffs allege that the State of Arizona provided federal authorities with access to the
 3 TRAC database, Plaintiffs do not allege that Western Union produced any money transfer records in
 4 response to requests from HSI, U.S. Immigration and Customs Enforcement (“ICE”), or any other
 5 federal agency or federal authority before 2019. Because Plaintiffs fail to allege that Western Union
 6 produced money transfer records to any federal agency until 2019, Plaintiffs have failed to state a
 7 claim for which relief can be granted under the RFPA from 2010 through June 30, 2019, when the
 8 Arizona Court Orders expired. *See* Am. Compl. ¶ 34.

9 Because the RFPA does not apply to productions to non-federal actors, Count One also
 10 should be dismissed as to Western Union to the extent it is based on productions to the State of
 11 Arizona prior to June 30, 2019.

12 **B. Counts One and Two Should Be Dismissed Because Western Union’s**
 13 **Productions Fall Within The Bank Secrecy Act’s Safe Harbor.**

14 Counts One and Two both fail for an independent reason: Western Union’s productions of
 15 money transfer records—to the State of Arizona pursuant to Court orders and to HSI pursuant to
 16 compulsory customs summonses—are protected by the safe harbor in the Annunzio-Wylie Anti-
 17 Money Laundering Act of 1992, which amended the BSA (hereafter “the Annunzio-Wylie Act”).
 18 31 U.S.C. § 5318(g)(3)(A). In that safe harbor, the Annunzio-Wylie Act provides “financial
 19 institutions”⁹ (but not any government or agency of government) immunity from civil liability for
 20 disclosures made pursuant to a legal authority:

21 Any financial institution that ... makes a disclosure pursuant to this
 22 subsection *or any other authority* ... shall not be liable to any person
 23 under any law or regulation of the United States ... for any failure to
 24 provide notice of such disclosure to the person who is the subject of
 such disclosure.

25 ⁸ Plaintiffs even acknowledge that, before 2017, TRAC documents “touted TRAC’s *goal* of
 26 leveraging the analytical resources of federal law enforcement agencies,” and that only “[b]y 2017”
 27 had “TRAC [] cemented a close working relationship with ICE subcomponent HSI.” Am. Compl.
 ¶ 30.

28 ⁹ In contrast to the RFPA, the BSA, which the Annunzio-Wiley Act amends, explicitly includes
 money transmitters within the definition of a “financial institution.” 31 U.S.C. § 5312(2)(R).

1 *Id.* (emphasis added). Courts have interpreted the reference to “other authority” (which they refer to
2 as the Annunzio-Wylie Act’s “third safe harbor”) as extending the safe harbor to productions made
3 pursuant to *legal* authority, such as a statute, court order, or subpoena. The Eleventh Circuit
4 explained:

5 Because the second safe harbor [“makes a disclosure pursuant to this
6 subsection”] protects disclosures pursuant to the legal authority of the
7 Treasury Secretary’s regulations, “other authority” means authority
8 other than the Treasury Secretary’s regulations. The “other authority”
9 must be legal authority, ... *e.g.*, statutes, regulations, court orders, etc.
10 Hence, for a financial institution’s disclosure to fall within the confines
11 of the third safe harbor [“pursuant to ... any other authority”], the
financial institution must be able to point to a statute, regulation, court
order, or other source of law that specifically or impliedly authorized
the disclosure. If it cannot do so, the disclosure is not entitled to the
protection of the safe harbor.

12 *Lopez v. First Union Nat’l Bank of Fla.*, 129 F.3d 1186, 1193-94 (11th Cir. 1997). *Lopez* held that a
13 bank’s disclosure of customer financial records pursuant to a seizure warrant in alleged violation of
14 the RFPA was protected by the Annunzio-Wylie Act’s safe harbor for disclosures made pursuant to
15 “other authority.” *Id.* (citing 31 U.S.C. § 5318(g)(3)). The Eleventh Circuit explained that a seizure
16 warrant represents “a judicial determination that the government had a legal right to obtain [the
17 plaintiff’s] financial records,” and that the bank “was neither required nor permitted to sit in review
18 of the court’s legal determination. It is immune from any liability for any disclosures made pursuant
19 to the seizure warrant.” *Id.*

20 Similarly, in *Coronado v. Bank Atlantic Bancorp, Inc.*, 222 F.3d 1315 (11th Cir. 2000), the
21 Eleventh Circuit held that the Annunzio-Wylie Act safe harbor shielded the defendant bank from
22 liability under the RFPA for production of bank records to law enforcement in response to grand jury
23 subpoenas. Drawing on *Lopez*, *Coronado* distinguished between “a mere verbal request from a
24 government agent” and a grand jury subpoena, concluding that the latter has the force of law because
25 “there is a legal mechanism” for enforcement. *Id.* at 1320. *Coronado* further reasoned that “[f]orcing
26 a bank to challenge a facially valid grand jury subpoena in order to avoid liability to ... its customers
27 would fly in the face of ... the Annunzio-Wylie Act’s clear intent to encourage cooperation with
28 money laundering investigations.” *Id.* at 1321. *Coronado* concluded that it was proper to label

1 “grand jury subpoenas, like search warrants or court orders, ‘legal authority’ under *Lopez*,” and “that
2 a grand jury subpoena qualifies as ‘other authority’ under the Annunzio-Wylie Act’s third safe
3 harbor.” *Id.*; *see also Widi v. McNeil*, No. 2:12-cv-00188, 2013 WL 5407457, at *8 (D. Me. Sept. 25,
4 2013) (“Whatever else ‘other authority’ means [in 31 U.S.C. § 5318(g)(3)], it applies to the legal
5 mandate of a grand jury to produce records.”).

6 Western Union’s productions of money transfer records in response to the Arizona Court
7 Orders were made pursuant to “legal” authority under *Lopez* and *Coronado*. And, similar to the
8 subpoenas at issue in *Coronado*, Western Union produced money transfer records to HSI pursuant to
9 compulsory customs summonses, which impose penalties up to \$100,000 for noncompliance and
10 allow HSI to seek enforcement. 19 U.S.C. § 1509 (g)(2), (6). Western Union was neither required
11 nor permitted to sit in review of the Arizona Court’s legal determination, nor was Western Union
12 required to challenge a subpoena from HSI. Therefore, pursuant to the Annunzio-Wylie Act’s safe
13 harbor, Western Union is immune from liability for its productions to the State of Arizona pursuant
14 to Court order and in response to compulsory customs summonses from HSI.

15 This immunity applies not only to the federal RFPA claim, but also to Count Two’s UCL
16 claim based on Cal. FIPA because, otherwise, state law would override Congress’s decision to
17 provide a safe harbor. Preemption derives from the U.S. Constitution’s Supremacy Clause, which
18 directs that the “Laws of the United States ... shall be the supreme Law of the Land.” U.S. Const.,
19 art. VI, cl. 2. Federal law prevails and preempts state law, even in the absence of an express
20 preemption provision, where “compliance with both federal and state law is impossible,” or where,
21 as here, “the state law stands as an obstacle to the accomplishment and execution of the full purposes
22 of Congress.” *Oneok v. Learjet, Inc.*, 575 U.S. 373, 373, 377 (2015). State law is preempted “to the
23 extent of *any* conflict with a federal statute,” particularly so where its enforcement “undermines” the
24 “natural effect” of a federal law. *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000).
25 Counts One and Two should both be dismissed as barred by the Annunzio-Wiley Act safe harbor.

26 **C. Count Two Also Should Be Dismissed Because Plaintiffs Fail To State A Claim**
27 **Under Law.**

28 Count Two also fails for two additional reasons: First, Plaintiffs lack standing to bring a

1 claim under the UCL where Cal. FIPA contains no private right of action. Second, Western Union’s
2 productions of money transfer records in response to court orders and administrative subpoenas,
3 even without explicit prior customer consent, fall within statutory exceptions that were designed to
4 ensure that California’s financial privacy statute would not interfere with law enforcement activity.
5 Because Plaintiffs cannot allege that Western Union violated Cal. FIPA, Plaintiffs’ UCL claim set
6 forth in Count Two should be dismissed.

7 **1. Plaintiffs Lack Standing To Bring A Claim Under The California UCL.**

8 Cal. FIPA contains no private right of action, and thus Plaintiffs lack standing to bring a
9 claim for unlawful conduct under the UCL. To state a UCL claim, a plaintiff must show an
10 “unlawful, unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. Plaintiffs
11 plead that Western Union engaged in unlawful business practices in violation of the UCL, Am.
12 Compl. ¶ 79, bringing their claim under the “unlawful” prong of the UCL. “By proscribing any
13 unlawful business practice, Section 17200 borrows violations of other laws and treats them as
14 unlawful practices that the unfair competition law makes independently actionable.” *Cel-Tech*
15 *Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 180 (1999) (internal quotes and
16 citation omitted). Therefore, to pursue a UCL claim under the “unlawful” prong of Section 17200,
17 Plaintiffs must allege a predicate violation of law, *i.e.*, that a challenged practice “violates any
18 federal or California statute or regulation.” *Shaeffer v. Califia Farms, LLC*, 44 Cal. App. 5th 1125,
19 1136 (2020). Furthermore, courts find that plaintiffs lack standing to bring suit under the “unlawful”
20 prong of the UCL where the underlying statute does not contain a private right of action. *See*
21 *O’Donnell v. Bank of Am., Nat. Ass’n*, 504 Fed. Appx. 566 (9th Cir. 2013) (affirming dismissal of
22 UCL claim based on alleged violation of the Federal Trade Commission Act because statute did not
23 create a private right of action); *Newton v. Am. Debt Svcs., Inc.*, 75 F. Supp. 3d 1048 (N.D. Cal.
24 2014) (holding that UCL claim cannot be predicated on Federal Insecticide, Fungicide, and
25 Rodenticide Act (“FIFRA”) due to Congress’s rejection of private actions to enforce FIFRA);
26 *Hartless v. Clorox*, 2007 WL 3245260, at *4 (S.D. Cal. Nov. 2, 2007) (same); *Silva v. AvalonBay*
27 *Communities, Inc.*, No. LACV1504157JAKPLAX, 2015 WL 11422302, at *10 (C.D. Cal. Oct. 8,

28

1 2015) (granting motion to dismiss claim alleging “unlawful” prong of UCL where underlying
2 California statute did not contain a private right of action).

3 Here, and unlike other California consumer protection statutes, no provision of Cal. FIPA
4 contains a private right of action; to the contrary, pursuant to its terms, “the civil penalties provided
5 for in [Cal. FIPA] shall be *exclusively* assessed and recovered in a civil action brought in the name of
6 the people of the State of California ... by ... the Attorney General [or] [t]he functional regulator
7 with jurisdiction over regulation of the financial institution.” Cal. Fin. Code § 4057 (emphasis
8 added). The California Supreme Court has concluded in the context of the California Unfair
9 Insurance Practices Act (“UIPA”) that, where “the Legislature ... contemplated only administrative
10 enforcement by the Insurance Commissioner,” “a litigant may not rely on the proscriptions of [the
11 statute] as the basis for a UCL claim.” *Zhang v. Superior Ct.*, 57 Cal. 4th 364, 384 (2013). Thus,
12 where a private right of action under a given statute is “absolutely barred, a litigant may not rely on
13 the proscriptions of [that law] as the basis for a UCL claim.” *Newton*, 75 F. Supp. 3d at 1058.
14 Because Cal. FIPA does not provide a private right of action, Plaintiffs fail to identify a predicate
15 violation of law that they have standing to address. Plaintiffs therefore cannot state a claim under the
16 “unlawful” prong of the UCL, and Count Two should be dismissed.

17 **2. Western Union’s Productions Are Exempt From Liability Under**
18 **Cal. FIPA.**

19 Plaintiffs contend that Western Union committed a predicate unlawful act by sharing
20 consumers’ nonpublic, personal information in violation of Cal. FIPA. Am. Compl. ¶ 79. However,
21 Western Union’s productions of money transfer records to the State of Arizona and in response to
22 subpoenas from federal law enforcement were protected under exceptions to Cal. FIPA.

23 Generally, Cal. FIPA prohibits financial institutions¹⁰ from sharing nonpublic personal
24 information with any nonaffiliated third party without the explicit prior consent of the consumer.
25 Cal. Fin. Code § 4052.5. However, even as alleged by Plaintiffs, Western Union’s conduct falls

26 _____
27 ¹⁰ Cal. FIPA defines “financial institution” broadly to include “any institution the business of which
28 is engaging in financial activities described in Section 1843(k) of Title 12 of the United States Code
and doing business in this state.” Cal. Fin. Code § 4052. Section 1834(k)’s definition of “financial
activities” includes transferring money. 12 U.S.C. § 1843(k)(4).

1 squarely within two exceptions to Cal. FIPA.

2 First, Western Union is not liable under Cal. FIPA for producing “nonpublic personal
3 information” “to the extent specifically required or specifically permitted under other provisions of
4 law and in accordance with the [RFPA], to law enforcement agencies ... or for an investigation on a
5 matter related to public safety.” Cal. Fin. Code § 4056(5). As alleged by Plaintiffs, Western Union
6 produced money transfer records only as required by law, specifically, court orders and
7 administrative subpoenas, to state and federal law enforcement agencies. *See supra*, Part II. And, as
8 described above, Western Union’s money transfer services are not subject to any requirements under
9 the RFPA. *See supra*, Part IV.A. Accordingly, Plaintiffs fail to allege that Western Union has
10 violated Cal. FIPA.

11 Second, Western Union is not liable under Cal. FIPA for producing “nonpublic personal
12 information” “to comply with federal, state ... and other applicable legal requirements” or “to
13 comply with a properly authorized civil, criminal, administrative, or regulatory investigation or
14 subpoena or summons by federal, state, or local authorities; or to respond to judicial process.”
15 Cal. Fin. Code § 4056(b)(7). Western Union’s productions pursuant to the Arizona Court Orders and
16 customs summonses fall squarely within this exception, too.

17 At the state level, Western Union is exempt from Cal. FIPA for its production of money
18 transfer records in accordance with the terms of the Arizona Court Orders from 2010–2019 because
19 such productions were in compliance with state law and judicial process. *See Am. Compl.* ¶ 28;
20 Armbrust Decl., Exs. A-E. From 2010 through the first half of 2019, Western Union produced
21 money transfer records to Arizona only after extensive litigation and pursuant to the Arizona Court
22 Orders. *See supra*, Part II.A. Western Union was obligated to comply with the Arizona Court Orders.
23 Accordingly, Cal. FIPA did not require Western Union to provide notice to consumers when it
24 produced money transfer records to Arizona in response to the Arizona Court Orders.

25 At the federal level, Western Union is exempt from Cal. FIPA for its production of money
26 transfer records to comply with compulsory customs summonses issued pursuant to federal law, 19
27 U.S.C. § 1509. *See Am. Compl.* ¶¶ 35, 46; *Budowich v. Pelosi*, No. 21-3366 (JEB), 2022 WL
28 2274359, at *15 (D.D.C. June 23, 2022) (dismissing a UCL claim predicated on a violation of Cal.

1 FIPA, finding that defendant bank shared information “to comply with federal ... and other
2 applicable legal requirements” in accordance with Section 4056(b)(7)). Section 4056(b)(7)’s
3 “expansive language covers the range of subpoenas issued by both state and federal governments.”
4 *Budowich*, 2022 WL 2274359, at *16. The HSI customs summonses expressly fall within the
5 statute’s subpoena exception. *See* Cal. Fin. Code § 4056(b)(7) (exception for compliance with a
6 “subpoena or summons by federal, state, or local authorities”); *Budowich*, 2022 WL 2274359
7 (subpoena exception to Cal. FIPA applied where defendant bank responded to congressional
8 subpoena). Accordingly, Cal. FIPA did not require Western Union to provide notice to consumers
9 when it produced money transfer records to HSI in response to customs summonses.

10 Through each of these exceptions, California law “[w]isely” avoids interfering with the
11 orders of state courts or the investigative powers of the federal government “by excepting from [Cal.
12 FIPA’s] coverage disclosures made pursuant to legitimate government investigations or subpoenas,
13 such as the one[s] at issue here.” *Budowich*, 2022 WL 2274359, at *16.

14 Without these exceptions, Cal. FIPA would be preempted by federal law if it sought to
15 prohibit private parties from complying with subpoenas issued by federal agencies, particularly
16 when those agencies operate in uniquely federal domains such as border control and immigration. As
17 explained above, *supra*, Part IV.B., preemption derives from the U.S. Constitution’s Supremacy
18 Clause, which directs that the “Laws of the United States ... shall be the supreme Law of the Land.”
19 U.S. Const., art. VI, cl. 2; *see also Oneok*, 575 U.S. at 373, 377; *Crosby*, 530 U.S. at 372.

20 Cal. FIPA would directly interfere with federal law if it did not contain the Section 4056
21 exceptions, which show that the California Legislature went to great lengths to ensure that Cal. FIPA
22 would not interfere with federal or state law enforcement prerogatives. Take, for example, the
23 situation where a federal law enforcement agency such as HSI served Western Union with an
24 administrative subpoena requiring compliance under federal law (*e.g.*, 19 U.S.C. § 1509). If Cal.
25 FIPA purported to prohibit Western Union from complying with that subpoena, it would be
26 impossible for Western Union to comply with both federal and state law—federal law would compel
27 Western Union to produce information responsive to the subpoena, while state law would forbid that
28 same production. For exactly the same reason, absent these exceptions, Cal. FIPA would stand as an

1 obstacle to the achievement of Congress’s full purposes in enacting laws like 19 U.S.C. § 1509,
2 which give federal officials authority to investigate compliance with the law, among other things.
3 Cal. FIPA would instead block federal officials from effectively carrying out their investigations.

4 Courts have declined to allow state statutes to interfere with federal investigations in this
5 way. In some cases, they have construed Cal. FIPA and other similar statutes in a manner that avoids
6 a conflict between state and federal law. *See Budowich*, 2022 WL 2274359, at *16 (“[A]dopting [the
7 plaintiff’s] interpretation of [Cal. FIPA] would lead to the unlikely scenario in which state law
8 prohibits third parties from complying with a wide range of subpoenas issued by the federal
9 government. Wisely, however, the plain text of [the statute] forecloses such an anomalous result by
10 exception from Cal. FIPA’s coverage disclosures made pursuant to legitimate government
11 investigations or subpoenas[.]”). In other cases, courts have held state statutes preempted to the
12 extent that they would cause such interference. *See Sornberger v. First Midwest Bank*, 278 F. Supp.
13 2d 935, 944 (C.D. Ill. 2002) (finding Illinois Banking Act provision preempted by the RFPFA).

14 The better reading of Cal. FIPA is the one that, consistent with its text, treats the state statute
15 as deferring to federal law, including the unique federal interests at play in matters of immigration
16 and border control. *See* Cal. Fin. Code § 4056 (permitting release of financial information to law
17 enforcement officers pursuant to federal law, including the RFPFA); *Arizona v. United States*, 567
18 U.S. 387, 394-95 (2012) (federal government has “well settled,” “broad, undoubted power over the
19 subject of immigration”); Am Compl. ¶ 38 (alleging “anxiety about immigration” as a focus of
20 TRAC). The Court should adopt that reading, thereby avoiding any need to consider whether Cal.
21 FIPA is preempted by federal law.

22 Plaintiffs allege that Western Union violated Cal. FIPA by producing money transfer records
23 in response to state court orders and federal subpoenas, but they overlook that Cal. FIPA permits
24 exactly that conduct by excepting compliance with such legal processes from its terms. Plaintiffs’
25 UCL claim therefore fails to the extent it is predicated on a violation of Cal. FIPA, and Plaintiffs do
26 not allege any other predicate violation of law that could create liability for Western Union under the
27 UCL. Therefore, Count Two should be dismissed.

28

1 **V. CONCLUSION**

2 For the foregoing reasons, as well as any additional reasons argued by the other Defendants,
3 Western Union respectfully requests that this Court grant its Motion to Dismiss Plaintiffs' Amended
4 Complaint.

5 Dated: March 3, 2023

Respectfully submitted,

6
7 /s/ Hille R. Sheppard

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