

EXHIBIT 1
DEMURRER



FILED
10/14/26
09:31 AM
A2605012

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8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO**
11 **UNLIMITED JURISDICTION**

12 JEREMIAH MANQUIZ, individually, and on behalf
13 of other members of the general public similarly
situated,

14 Plaintiff,

15 v.

16 RACE TELECOMMUNICATIONS, LLC, and
DOES 1-20,

17 Defendants.
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Case No.: CIVSB2621521
Hon. Carlos M. Cabrera
Dept. S24

**NOTICE OF DEMURRER AND
DEMURRER TO COMPLAINT BY
DEFENDANT RACE
TELECOMMUNICATIONS, LLC**

*(Filed concurrently with Motion to Strike;
Declaration of Matthew Follett; [Proposed]
Order; and Proof of Service)*

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 11, 2027, at 9:00 AM, or as soon thereafter as the
3 matter may be heard, in Department S24 of the above-entitled Court, located at 247 West Third Street,
4 San Bernardino, California 92415, Defendant Race Telecommunications, LLC (“Race” or “Defendant”)
5 will and does hereby demur to the following:

6 (1) The definition of the putative “Class” at Paragraph 52 of the Complaint because the class
7 definition is entirely predicated on alleged violations of California’s Automatic Renewal Law, Business
8 and Professions Code section 17600 et seq. (“ARL”), and Race is expressly exempt from the ARL under
9 Business and Professions Code section 17605, subdivision (b). Because Race is exempt from the ARL as
10 a matter of law, the class definition derived from alleged ARL violations has no legal foundation and fails
11 to state facts sufficient to constitute a class;

12 (2) The definition of the “Misrepresentation Subclass” at Paragraph 53 of the Complaint, and
13 the definition of any class predicated on alleged misrepresentations because neither subclass can establish
14 the commonality required for class certification as a matter of law. The Complaint’s own allegations
15 confirm that each putative class member’s claim turns on the substance of individualized telephone
16 interactions with Race’s customer service representatives — interactions that varied from consumer to
17 consumer and cannot be resolved through common proof.

18 (3) Count I (Unfair Competition Law) to the extent the “unlawful” prong is predicated on
19 alleged violations of the ARL, on the grounds that Race is expressly exempt from the ARL under Business
20 and Professions Code section 17605, subdivision (b). A UCL claim predicated on a violation of a statute
21 that does not apply to the defendant does not state a cause of action.

22 This demurrer is based upon this Notice of Demurrer, the accompanying Memorandum of Points
23 and Authorities, the Declaration of Counsel, the [Proposed] Order, the concurrently filed Motion to Strike
24 and supporting papers, which are incorporated herein, the pleadings and records on file in this action, and
25 such further evidence and argument as may be presented at or before the hearing of this demurrer.

1 Dated: October 6, 2026

FOX ROTHSCHILD LLP

2
3 By /s/ Matthew Follett
4 Jeffrey Grant
5 Matthew Follett
6 Attorneys for Defendant,
7 RACE TELECOMMUNICATIONS, LLC
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Race Telecommunications, LLC (“Race”) demurs to the putative Class and Subclass
4 definitions in the Complaint filed by Plaintiff Jeremiah Maniquiz (“Plaintiff”) because they both fail as a
5 matter of law. Race further demurs to the Unfair Competition Law claim to the extent that its allegations
6 under the “unlawful” prong rest on Race’s purported violations of a statute from which it is exempt. This
7 Demurrer is filed concurrently with Defendant’s Motion to Strike Portions of the Complaint, which targets
8 *inter alia* Plaintiff’s allegations about Race having violated the statute (California “Automatic Renewal
9 Law”).

10 Plaintiff alleges that Race debited his bank account twice after he canceled internet service and that
11 it transmitted a “Refund Receipt” falsely representing the first charge had been reversed when no refund
12 was processed. On this alone, Plaintiff asserts three causes of action: (1) violation of the Unfair Competition
13 Law, Business and Professions Code section 17200 et seq. (“UCL”); (2) violation of the Consumers Legal
14 Remedies Act, Civil Code section 1750 et seq. (“CLRA”); and (3) common law conversion. He seeks class-
15 wide relief, including damages, restitution, disgorgement, punitive damages, and injunctive relief.

16 The Complaint’s class definitions are fatally deficient. The putative class definition relies on
17 allegations about Race having violated a law from which it is exempt. Specifically, it relies on California’s
18 Automatic Renewal Law, Business and Professions Code section 17600 et seq. (“ARL”) as the predicate for
19 the UCL’s “unlawful” prong. Business and Professions Code section 17605, subdivision (b), exempts from
20 the ARL any service provided by a business regulated by the California Public Utilities Commission
21 (“CPUC”). The Complaint admits that Race “operates as a telecommunications provider subject to certain
22 oversight by the [CPUC].” Race is thus exempt from the ARL as a matter of law and ARL violations cannot
23 serve as a UCL predicate.

24 To the extent the Complaint’s causes of action are predicated on allegations of fraud, no class is
25 possible. The Complaint’s own allegations confirm that each putative subclass member’s claim turns on
26 what a specific representative said, when, and whether that consumer actually relied on those statements.
27 These inherently individualized inquiries defeat the commonality and predominance requirements essential
28 to class certification.

1 **II. BACKGROUND**

2 Plaintiff's Complaint seeks to prosecute a putative class action on behalf of two overlapping groups.
3 Each stem from his allegations that Race debited his bank account twice for \$748.25 between November 16
4 and 17, 2024, after he had canceled his internet service. (Compl., ¶¶ 16, 22, 26.) Plaintiff further alleges that
5 Race sent a "Refund Receipt" on November 16, 2024, representing that the first charge had been reversed,
6 but that the refund was never processed (Compl., ¶¶ 24, 25), and that in a later call a Race representative
7 "apologized for the error and stated that the funds would be refunded" (Compl., Exh. A).

8 The "Class" is defined as —

9 "All persons in California who... were enrolled in Defendant's automatically
10 renewing internet service or subscription plan without Defendant providing clear
11 and conspicuous automatic renewal terms, obtaining affirmative consent to those
12 terms, and/or providing a compliant acknowledgment...including "consumers who
13 were subsequently charged after cancellation as a result of Defendant's failure to
14 provide a compliant cancellation mechanism or acknowledgment."

15 (Compl., ¶ 52.)

16 The Complaint defines the "Misrepresentation Subclass" as —

17 "All persons in California who, during the applicable statute of limitations period,
18 were subjected to uniform representations by Defendant that no further charges
19 would be imposed after cancellation and/or that a refund had been issued or
20 processed, and who were subsequently charged by Defendant after cancellation or
21 were not provided the promised refund, through the date of class certification."

22 (Compl., ¶ 53.)

23 The Class definition is built on purported violations of the ARL, which exempts companies like
24 Race that are regulated by CPUC. In terms of purported "misrepresentations" pleaded to support the
25 Subclass, Plaintiff identifies the following: (1) a telephone call in October 2024 during which a Race
26 representative told Plaintiff he "would not be charged" in connection with his equipment return (Compl.,
27 ¶¶ 18, 89(a)); (2) an automated cancellation confirmation email transmitted on November 15, 2024
28 (Compl., ¶¶ 20, 89(b)); and (3) the "Refund Receipt" transmitted on November 16, 2024 (Compl., ¶¶ 24,

89(c)). The Complaint includes a general disclaimer that the claims “do not depend on individualized negotiations or unique interactions” (Compl., ¶ 59), but also pleads the specific telephone calls described above as the factual predicate for the misrepresentations.

The claims asserted here were previously filed in the United States District Court for the Central District of California. After Race moved to dismiss and Plaintiff voluntarily dismissed the sole federal claim, the court ordered Plaintiff to show cause why the case should not be dismissed for lack of subject-matter jurisdiction under the Class Action Fairness Act (“CAFA”). Plaintiff’s belated attempt to invoke CAFA jurisdiction failed, and on June 22, 2026, the court dismissed the action without prejudice.

The Complaint now reasserts the three surviving state-law claims: UCL, CLRA, and conversion. (Compl., ¶ 44.)

III. LEGAL STANDARD

A demurrer tests the legal sufficiency of a pleading. (Code Civ. Proc., § 430.10.) Under subdivision (e), a demurrer lies where the complaint “does not state facts sufficient to constitute a cause of action.” Under subdivision (f), a demurrer lies where a pleading is “uncertain,” meaning ambiguous or unintelligible. The court accepts as true all properly pleaded material facts but does not assume the truth of contentions, deductions, or conclusions of law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Trial courts may decide class certification on demurrer. (*Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 212; *Schermer v. Tatum* (2016) 245 Cal.App.4th 912, 923.) A court may sustain a demurrer to class allegations where “it concludes as a matter of law that, assuming the truth of the factual allegations in the complaint, there is no reasonable possibility that the requirements for class certification will be satisfied.” (*Tucker, supra*, 208 Cal.App.4th at p. 211.) When the “invalidity of the class allegations is revealed on the face of the complaint, and/or by matters subject to judicial notice, the class issue may be properly disposed of by demurrer or motion to strike.” (*Canon U.S.A., Inc. v. Superior Court* (1998) 68 Cal.App.4th 1, 5.) “In such circumstances, there is no need to incur the expense of an evidentiary hearing or class-related discovery.” (*Ibid.*)

1 **IV. ARGUMENT**

2 **A. THE UCL’S “UNLAWFUL” PRONG FAILS TO THE EXTENT IT RELIES ON**
3 **ARL VIOLATIONS AS A PREDICATE**

4 Count I alleges that Race’s conduct violates the UCL’s “unlawful” prong by incorporating
5 violations of multiple predicate statutes. Paragraph 82 identifies three predicate theories: (a) CLRA
6 violations; (b) common law conversion; and (c) ARL violations, including the failure to present automatic
7 renewal terms, obtain affirmative consent, and provide a compliant acknowledgment. (Compl., ¶ 82(a)–
8 (c).) To the extent the UCL’s unlawful prong is predicated on ARL violations, it fails to state facts
9 sufficient to constitute a cause of action.

10 As set forth in the concurrent Motion to Strike, Business and Professions Code section 17605,
11 subdivision (b), exempts CPUC-regulated entities from the ARL. The Complaint concedes that Race is a
12 telecommunications provider that CPUC oversees. (Compl., ¶ 44.) A UCL claim predicated on a violation
13 of a statute that does not apply to the defendant does not state a cause of action. (*See Cel-Tech*
14 *Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 [the UCL
15 “borrows” violations of other laws; if the borrowed law does not apply, there is no violation to borrow].)

16 Paragraph 83 acknowledges that “the ARL does not provide an independent private right of action”
17 and asserts that “violations of the ARL are actionable under the UCL as unlawful business practices.”
18 (Compl., ¶ 83.) But this theory presupposes that the ARL applies to Race. If it does not (and section 17605
19 establishes that it does not), there is no ARL violation to incorporate into the UCL. The unlawful prong
20 cannot bootstrap a statutory obligation the Legislature exempted Race from performing.

21 Race does not contend that Count I fails in its entirety. The UCL claim rests on two other predicate
22 theories (CLRA violations and conversion) unaffected by the section 17605 exemption. (Compl., ¶ 82(a)–
23 (b).) Race demurs only to the extent Count I relies on ARL violations as a predicate for the unlawful
24 prong. The demurrer should be sustained with prejudice because no amendment can cure the deficiency:
25 Race’s CPUC-regulated status is an immutable fact that cannot be repled around.

1 **B. PLAINTIFF CANNOT PLEAD CLASS ALLEGATIONS**

2 **1. PLAINTIFF CANNOT ESTABLISH THE COMMONALITY NEEDED**
3 **FOR CLASS CERTIFICATION OF THE SUBCLASS**

4 Each putative class member’s claim turns on the substance of individualized telephone interactions
5 with Race’s customer service representatives. These are interactions that would have varied from
6 consumer to consumer and cannot be resolved through common proof.

7 Class certification requires a “well-defined community of interest among the class members,” the
8 first element of which requires “predominant common questions of law or fact.” (Code Civ. Proc., § 382;
9 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Commonality “depends on
10 whether the defendant’s liability can be determined by issues common to all class members.” (*Knapp v.*
11 *AT&T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.) This threshold requirement can be
12 evaluated at the pleading stage when the complaint’s own allegations reveal that individualized inquiries
13 will predominate. (*Schermer, supra*, 245 Cal.App.4th at p. 923 [affirming demurrer to class allegations
14 where “causes of action relate largely to how each individual class member interacted with defendants”].)

15 A class action based on alleged misrepresentations cannot proceed when “individual evidence will
16 be required to determine whether the representations at issue were actually made to each member of the
17 class.” (*Knapp, supra*, 195 Cal.App.4th at p. 944; *Davis-Miller v. Automobile Club of Southern California*
18 (2011) 201 Cal.App.4th 106, 123.) Where representations were made through non-uniform channels,
19 including oral statements by individual agents, “what business practices were allegedly unfair, unlawful,
20 or fraudulent necessarily turns on an individualized assessment of which representations were made to
21 each proposed class member.” (*Knapp, supra*, 195 Cal.App.4th at pp. 943–944.) Allegedly standardized
22 forms or policies do not alter this analysis when claims turn on individual interactions. (*Schermer, supra*,
23 245 Cal.App.4th at p. 921.)

24 *Knapp* is instructive. There, the court affirmed denial of class certification because the proposed
25 class “would include subscribers who solely spoke with a representative on the telephone, those who only
26 considered certain advertisements, and those who only viewed [the defendant’s] Web site,” requiring “an
27 individual inquiry . . . to determine whether the representations received by each proposed class member
28 constituted misrepresentations, omissions, or nondisclosures.” (*Id.* at pp. 943–944.)

1 *Davis-Miller* reinforces the point: “oral representations by . . . telephone operators responding to
2 the calls of stranded members are by their nature inherently not common to the class” and “cannot be
3 proven without individual, case-by-case testimony.” (*Davis-Miller, supra*, 201 Cal.App.4th at p. 118.)
4 *Tucker* reached the same conclusion where purported misrepresentations were communicated through “a
5 variety of written materials, through the mail, via the Internet, by telephone and in retail stores”; whether
6 class members were misled “necessarily involves individualized inquiries.” (*Tucker, supra*, 208
7 Cal.App.4th at pp. 221, 225.)

8 The cases show that when claims are built on what individual representatives said to consumers
9 during phone calls, the question of what was said — and whether it was misleading — is inherently
10 individualized and not susceptible to class-wide resolution. (*Schermer, supra*, 245 Cal.App.4th at p. 925
11 [“individual issues predominate, inasmuch as: (i) the alleged unconscionable policies and/or procedures
12 at issue in this case primarily arose out of one-on-one interactions between different defendants (and/or
13 their agents) and each plaintiff and putative class member”].)

14 The Complaint’s narrative is built on a series of one-on-one phone calls between Plaintiff and
15 customer service representatives. These are precisely the individualized-interaction allegations that
16 *Knapp, Davis-Miller*, and *Tucker* identify as fatal to commonality. *First*, Plaintiff alleges that on October
17 15, 2024, he canceled his Race internet service by personally informing a representative that he “no longer
18 wanted the service due to persistent poor connectivity and customer service problems.” (Compl., ¶ 16.)
19 That is an individualized telephone interaction with a specific representative. *Second*, the CLRA demand
20 letter attached as Exhibit A alleges that on November 15, 2024, Plaintiff “contacted Defendant by
21 telephone to request a return shipping label” and that a representative “assured Plaintiff that the timing
22 would not be an issue and that no charges would be incurred.” (Compl., Exh. A.) This is a particularized
23 oral representation and the type that the *Davis-Miller* court affirmed “cannot be proven without individual,
24 case-by-case testimony.” (*Davis-Miller, supra*, 201 Cal.App.4th at p. 118.) *Third*, on November 17 and
25 18, 2024, Plaintiff “placed multiple calls to Defendant’s customer service line” and “was unable to reach
26 a live representative.” (Compl., ¶ 28.) The inability to reach a representative underscores the
27 individualized nature of each consumer’s experience with Race’s customer service apparatus. *Fourth*, in
28 a subsequent call, Race allegedly “apologized for the error and stated that the funds would be refunded.”

1 This is yet another individualized exchange. (Compl., Exh. A.)

2 If resolving each class member's claims requires reconstructing these consumer-by-consumer
3 telephone interactions (what was said, by which representative, to which consumer, and whether that
4 consumer relied on it), common questions cannot predominate. Anticipating this problem, Plaintiff offers
5 a boilerplate disclaimer that his claims "do not depend on individualized negotiations or unique
6 interactions but instead arise from Defendant's standardized practices, uniform billing systems, and form
7 communications directed to consumers." (Compl., ¶ 59.) But conclusory allegations of "uniform" or
8 "form" practices are not accepted on demurrer. (*Schermer, supra*, 245 Cal.App.4th at p. 925 [rejecting as
9 "merely contentions and/or improper factual conclusions" allegations that defendants "implemented a
10 uniform policy and procedure in each and every lease transaction"].)

11 Moreover, where a pleading includes a general allegation and an inconsistent specific allegation,
12 the specific allegations control. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1235
13 ["California courts have adopted the principle that specific allegations in a complaint control over an
14 inconsistent general allegation"].) Plaintiff cannot plead his way out of the individualized-inquiry problem
15 by disclaiming reliance on the phone calls that form the predicate for his claims. The disclaimer is
16 contradicted by the Complaint's narrative, and the specific allegations must govern.

17 **2. ACTUAL RELIANCE CANNOT BE ESTABLISHED ON A CLASS-WIDE** 18 **BASIS**

19 Even if commonality could otherwise be established as to what representations were made, the
20 CLRA imposes a separate requirement that defeats class treatment: actual reliance. For damages under the
21 CLRA, a plaintiff must prove reliance on the alleged misrepresentation. (*Nelson v. Pearson Ford Co.*
22 (2010) 186 Cal.App.4th 983, 1022 ["Under the CLRA, plaintiffs must show actual reliance on the
23 misrepresentation and harm"]; *see also* Civ. Code, § 1780.)

24 The Complaint illustrates the problem. Plaintiff alleges he "reasonably relied on Defendant's
25 representations by refraining from immediately escalating disputes, allowing Defendant continued access
26 to his account, and attempting to resolve the issue through Defendant's customer service channels rather
27 than immediately pursuing external remedies." (Compl., ¶ 90.) These are the acts of one consumer
28 responding to one set of individualized phone calls and emails. Whether any other class member received

1 the same representations, understood them the same way, and altered conduct in reliance can be answered
2 only consumer-by-consumer.

3 Where alleged misrepresentations were communicated through a mix of individualized telephone
4 calls and automated emails, class-wide reliance cannot be presumed. Each consumer’s reliance depends
5 on what that consumer was told, by whom, in what context, and what the consumer did in response. This
6 is the kind of individualized factual reconstruction that makes class treatment unworkable. (*See Knapp*,
7 *supra*, 195 Cal.App.4th at pp. 943–944 [requiring “an individual inquiry....to determine whether the
8 representations received by each proposed class member constituted misrepresentations, omissions, or
9 nondisclosures”]; *Davis-Miller, supra*, 201 Cal.App.4th at p. 118 [oral representations by telephone
10 operators “cannot be proven without individual, case-by-case testimony”].)

11 The reliance element provides an independent basis for concluding that the CLRA claim cannot
12 be adjudicated on a basis that is class wide.

13 3. THE AUTOMATED WRITTEN COMMUNICATIONS DO NOT CURE 14 THE INDIVIDUALIZED-INQUIRY PROBLEM

15 Plaintiff may argue that even if the oral representations are individualized, the class theory is saved
16 by Race’s automated written communications like the November 15, 2024 cancellation confirmation email
17 and the November 16, 2024 “Refund Receipt.” (Compl., ¶¶ 20, 24.) He might contend, for example, that
18 these communications were system-generated, sent uniformly; and thus, susceptible to common proof.
19 The argument would fail for two reasons.

20 *First*, the written communications are not the operative misrepresentations that the CLRA claims
21 are based on. Its theory is built on a progression of oral and written representations that, taken together,
22 allegedly induced Plaintiff to believe that he would incur no further charges. (Compl., ¶¶ 88–89.)
23 Paragraph 89 identifies the misrepresentations with particularity: (a) an October 2024 telephone call in
24 which a representative told Plaintiff he “would not be charged”; (b) the November 15 cancellation email;
25 and (c) the November 16 Refund Receipt. (Compl., ¶ 89(a)–(c).) The phone call is the foundational link
26 in this chain. Because the oral representations are inextricably intertwined with the written
27 communications in the Complaint’s theory of liability, the class cannot excise the individualized phone
28 calls and proceed on the written communications alone. Proving each class member’s CLRA claim would

1 require establishing what oral representations each consumer received, what the consumer understood
2 from the combination of communications, and whether the consumer relied on the totality of those
3 representations.

4 *Second*, even the written communications themselves present individualized issues. Whether a
5 consumer received the cancellation email or Refund Receipt, whether the consumer read it, and whether
6 the consumer relied on it are factual questions. The Complaint does not allege — nor could it plausibly
7 — that every class member received the same cancellation email or Refund Receipt on the same terms
8 and in the same sequence. And even if the email template was uniform, the reliance inquiry remains
9 individualized: each consumer’s decision to rely (or not) depends on the totality of that consumer’s
10 interactions with Race, including any prior phone calls. A uniform template alone does not translate to
11 uniform reliance.

12 **4. PLAINTIFF’S OWN ENUMERATED “COMMON QUESTIONS” FAIL**
13 **ON THEIR FACE TO ESTABLISH COMMONALITY**

14 Setting aside the individualized-phone-interaction problem, Plaintiff’s own enumerated “common
15 questions” in paragraph 61(a) through (i) fails to establish commonality. Each purported common question
16 either restates an ultimate merits question or requires an individualized inquiry that defeats class treatment.
17 Framing a merits question as a “common question” does not make it one. (*Knapp, supra*, 195 Cal.App.4th
18 at p. 941 [“Commonality . . . depends on whether the defendant’s liability can be determined by issues
19 common to all class members”].)

20 Paragraph 61(a) asks “[w]hether Defendant initiated recurring transfers from Class members’ bank
21 accounts after cancellation of service and/or without valid authorization.” (Compl., ¶ 61(a).) This is a
22 central merits inquiry dressed up as a commonality allegation. Whether any given transfer was “after
23 cancellation” requires proof that each consumer actually canceled, and the method, timing, and manner of
24 cancellation will differ from consumer to consumer. “Without valid authorization” likewise requires
25 consumer-by-consumer analysis of what authorization was given, whether it was revoked, and when.
26 These are individualized factual determinations.

27 Paragraph 61(b) asks “[w]hether Defendant continued to initiate electronic fund transfers after
28 consumers revoked authorization and/or canceled service.” (Compl., ¶ 61(b).) This duplicates subpart (a)

1 and suffers from the same deficiency. Whether each consumer “revoked authorization and/or canceled
2 service” is inherently individualized. It requires proof of when and how each consumer canceled, what
3 was communicated, and to whom. The Complaint’s own allegations illustrate the problem: Plaintiff
4 canceled via an individualized phone call on October 15, 2024 (Compl., ¶ 17), then received a cancellation
5 confirmation a full month later on November 15, 2024 (Compl., ¶ 20). Each consumer’s cancellation
6 timeline, method, and confirmation will differ. Whether transfers continued “after” cancellation for any
7 given consumer depends on that consumer’s particular facts.

8 Paragraph 61(c) asks “[w]hether Defendant made uniform or standardized representations
9 regarding billing, cancellation, and/or refunds.” (Compl., ¶ 61(c).) This question underscores the
10 individualized-inquiry problem. Whether any particular representation was “uniform or standardized”
11 depends on an assessment of which representations were made to each consumer, through what channel,
12 and with what content. The Complaint is built on one-on-one telephone calls, which are precisely the non-
13 uniform, particularized oral interactions that *Knapp*, *Davis-Miller*, and *Tucker* identify as fatal to
14 commonality. (See *Knapp*, *supra*, 195 Cal.App.4th at pp. 943–944; *Davis-Miller*, *supra*, 201 Cal.App.4th
15 at p. 118.) Whether Race’s representations were “uniform” is itself the disputed issue. It cannot also serve
16 as a common question that resolves class liability.

17 Paragraph 61(d) asks “[w]hether Defendant issued refund confirmations without actually
18 processing refunds.” (Compl., ¶ 61(d).) But whether each class member received a refund confirmation
19 or the corresponding refund was processed are consumer-specific questions. The answer will differ
20 depending on whether the consumer received a “Refund Receipt,” the circumstances under which it was
21 sent, and whether a refund was actually credited. This subpart presupposes a uniform factual scenario that
22 the Complaint’s narrative contradicts: Plaintiff’s “Refund Receipt” was transmitted on November 16,
23 2024, in connection with his particular invoice (Compl., ¶ 24), and the Complaint does not allege that
24 every class member received an identical refund confirmation under identical circumstances.

25 Paragraph 61(e) asks “[w]hether Defendant’s conduct constitutes violations of the California
26 Consumer Legal Remedies Act, the Unfair Competition Law, and/or conversion.” (Compl., ¶ 61(e).) This
27 is not but a restatement of the ultimate merits determination. Whether Race’s conduct violates the statutes
28 as to each class member is the central liability inquiry. Labeling a merits determination as a “common

question” does not transform it into one. (*Knapp, supra*, 195 Cal.App.4th at p. 941.)

Paragraph 61(f) asks “[w]hether Defendant violated California’s Automatic Renewal Law.” (Compl., ¶ 61(f).) As set forth in the concurrently filed Motion to Strike, Business and Professions Code section 17605, subdivision (b), exempts CPUC-regulated entities from the ARL. The Complaint admits that Race is subject to CPUC oversight. (Compl., ¶ 44.) Because the ARL does not apply to Race, this purported common question is a legal nullity. It cannot establish commonality because it asks about a statutory violation that, as a matter of law, Race cannot commit.

Subpart (g) asks whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief (Compl., ¶ 61(g)). Subpart (h) asks whether Race’s unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members (Compl., ¶ 61(h)). These are both restatements of the ultimate merits determination with resolution depending on each consumer’s individualized experience with Race’s billing and customer service practices. Subpart (i) asks the method of calculation and extent of damages (Compl., ¶ 61(i)). This is also an individualized inquiry: the amount of any unauthorized debit, overdraft fees, and consequential harm will differ from consumer to consumer.

Not one of Plaintiff’s enumerated “common questions” identifies a question that can be resolved on a class-wide basis. Each either restates the ultimate liability determination or demands consumer-specific factual reconstruction antithetical to class treatment. The commonality allegations confirm, rather than overcome, the individualized nature of the claims.

V. CONCLUSION

Race respectfully requests that the Court sustain this demurrer. The putative class definition fails because it rests on alleged ARL violations from which Race is exempt. The subclass definitions fail because the claims require individualized inquiries incompatible with class certification. To the extent Count I relies on ARL violations as a UCL predicate, that theory fails as a matter of law.

Dated: October 6, 2026

FOX ROTHSCHILD LLP

By /s/ Matthew Follett
Jeffrey Grant
Matthew Follett
Attorneys for Defendant,
RACE TELECOMMUNICATIONS, LLC

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7

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9 **SUPERIOR COURT OF CALIFORNIA**
COUNTY OF SAN BERNARDINO
10 **UNLIMITED JURISDICTION**

11
12 JEREMIAH MANQUIZ, individually, and on behalf
of other members of the general public similarly
13 situated,

14 Plaintiff,

15 v.

16 RACE TELECOMMUNICATIONS, LLC, and
DOES 1-20,

17 Defendants.
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Case No.: CIVSB2621521
Hon. Carlos M. Cabrera
Dept. S24

**DECLARATION OF MATTHEW
FOLLETT IN SUPPORT OF
DEMURRER BY DEFENDANT RACE
TELECOMMUNICATIONS, LLC**

*(Filed concurrently with Memorandum of
Points and Authorities ISO Demurrer;
[Proposed] Order; and Proof of Service)*

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1. I am an attorney at Fox Rothschild LLP, counsel for Defendant, RACE COMMUNICATIONS, LLC ("Defendant" or "Race"). I have personal knowledge of the facts stated herein, except for those stated on information and belief, and if called as a witness, I would competently testify to them. I submit this declaration in support of Race's Motion to Dismiss (the "Motion").

with the Complaint in the above-captioned action on August 23, 2025, and its responsive pleading on September 22. The parties agreed to a stay of the trial pursuant to California Rules of Court, Rule 3.110(d), which provides for a stay of trial until January 7, 2026.

ed to meet and confer with counsel for Plaintiff about the substance of this

ber 26, 2026, I sent counsel for Plaintiff a meet and confer letter that outlined

a demurrer and motion to strike and the arguments for same, along with the

on which the demurrer and motion to strike would rest. The letter asked that

ir availability to discuss before the October 2nd deadline to meet and confer.

answered. A true and correct copy of the meet and confer letter is attached to

Exhibit 1.

/s/ Matthew Follett
Matthew Follett

EXHIBIT 1



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MATTHEW FOLLETT
Direct No: 424.285.7068
Email: mfollett@foxrothschild.com

September 25, 2026

VIA E-MAIL ONLY

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Meghan E. George, Esq.
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Law Offices of Todd M. Friedman, P.C.
23586 Calabasas Rd., Suite 105
Calabasas, CA 91302

Re: *Jeremiah Maniquiz v. Race Telecommunications, LLC, et al.*
Case No. CIVSB2621521, Superior Court of California, County of San Bernardino
Meet and Confer About Intended Demurrer and Motion to Strike by Defendant
Race Telecommunications, LLC

Counsel:

We represent Race Telecommunications, LLC ("Race") and write pursuant to Code of Civil Procedure sections 430.41 and 435.5. Race intends to demur and move to strike portions of the Complaint. The defects are fundamental; several cannot be cured by amendment.

A Pennsylvania Limited Liability Partnership

California Nevada Colorado New Jersey Delaware New York District of Columbia North Carolina Florida Oklahoma Georgia Pennsylvania Illinois South Carolina Massachusetts Texas Minnesota Missouri Washington



A. The UCL's "Unlawful" Prong Fails to the Extent It Relies on ARL Violations as a Predicate

The Complaint's UCL theory rests on alleged violations of the Automatic Renewal Law (ARL), Business and Professions Code section 17600 et seq. That theory fails as a matter of law. Business and Professions Code section 17605(b) exempts from the ARL any service provided by a business regulated by the CPUC. The Complaint admits at paragraph 44 that Race "operates as a telecommunications provider subject to certain oversight by the [CPUC]." That is a binding judicial admission. (*Gibbs v. American Airlines, Inc.* (1999) 74 Cal.App.4th 1, 11.)

The statute says "regulated by" — not "approved by" or "supervised as to the specific practice." The Legislature's word choice creates an entity-status exemption. Had it intended a narrower scope, it could have conditioned the exemption on CPUC approval of the particular renewal practice at issue. It did not. Reading such a limitation into the text renders "regulated by" surplusage. (*People v. Johnson* (2013) 57 Cal.4th 250, 260.)

Further, a UCL claim predicated on a statute that does not apply to the defendant states no cause of action. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) Race's CPUC-regulated status is immutable. No amendment can cure this defect.

B. The Putative Class Definition Fails as a Matter of Law

The class definition at paragraph 52 is tied to ARL disclosure requirements: clear and conspicuous terms, affirmative consent, and compliant acknowledgment. Without the ARL, the definition has no legal anchor. The defect is legal and incurable. Striking should be with prejudice.

Even if some ARL obligations survived, the class definition would still fail. Determining whether each class member received adequate disclosures, provided "affirmative consent," and obtained a "compliant acknowledgment" requires consumer-by-consumer analysis incompatible with class treatment.



C. The Misrepresentation Subclass Cannot Establish Commonality

The misrepresentation claims turn on individualized telephone interactions, including the October 15, 2024 cancellation call, the November 15, 2024 equipment-return call, and the November 17-18 follow-up calls. Each putative class member's claim depends on what Race's representative said to that consumer. That is the antithesis of commonality. (*Knapp v. AT&T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941; *Davis-Miller v. Automobile Club of Southern California* (2011) 201 Cal.App.4th 106, 118; *Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 221.) Conclusory allegations of "uniform" practices do not survive demurrer. (*Schermer v. Tatum* (2016) 245 Cal.App.4th 912, 925.)

The CLRA requires actual reliance. (*Nelson v. Pearson Ford Co.* (2010) 186 Cal.App.4th 983, 1022.) Whether other class members received the same representations, understood them the same way, and changed their conduct in reliance cannot be determined on a class-wide basis.

D. The ARL Allegations and Class Definition Based on Them Should Be Stricken

Paragraphs 3, 82(c), 83, and 52 should be stricken under Code of Civil Procedure sections 435 and 436. Each rests on the ARL, which does not apply to Race. The basis is the CPUC exemption analysis discussed above.

The defect warrants striking with prejudice. Race's CPUC-regulated status cannot change. Plaintiff's alternative pleading at paragraph 48, which asserts that the UCL claims survive independently of the ARL, virtually concedes the point. Whether the UCL has other predicates is irrelevant to whether ARL-specific allegations should remain. (*Cho v. Chang* (2013) 219 Cal.App.4th 521, 527.)

E. The Punitive Damages Prayer Should Be Stricken

Civil Code section 3294(b) requires that punitive damages against a corporation rest on authorization, ratification, or participation by an officer, director, or managing agent. The Complaint identifies no such individual. Paragraphs 8 and 12 attribute conduct to "Defendant"—which is the corporate entity—without more. That is not enough. (*Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 167; *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164.)

VIA E-MAIL ONLY



F. The Disgorgement Request Should Be Stricken

The word "disgorgement" should be stricken from paragraph 101(c). Private UCL plaintiffs cannot obtain nonrestitutionary disgorgement. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1148.) They are limited to injunctive relief and restitution under Business and Professions Code section 17203.

The Complaint's phrasing as "restitution and disgorgement" treats them as indistinct remedies. They are not. (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 127; *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 173-177.) The deficiency is substantive and incurable.

This letter does not exhaust Race's grounds for demurrer or motion to strike. Please advise of your availability to discuss by October 2, 2026, which is our deadline to meet and confer. We would prefer to resolve these issues without having to file the demurrer or motion.

Respectfully,

/s/ Matthew Follett

Carbon Copies:

John Shaeffer (jshaeffer@foxrothschild.com)

Jeffrey Grant (jgrant@foxrothschild.com)

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**
10 **UNLIMITED JURISDICTION**

11 JEREMIAH MANQUIZ, individually, and on behalf
12 of other members of the general public similarly
situated,

13 Plaintiff,

14 v.

15 RACE TELECOMMUNICATIONS, LLC, and
16 DOES 1-20,

Defendants.

Case No.: CIVSB2621521
Hon. Carlos M. Cabrera
Dept. S24

**[PROPOSED] ORDER GRANTING
DEMURRER BY DEFENDANT RACE
TELECOMMUNICATIONS, LLC**

1 **[PROPOSED] ORDER GRANTING DEMURRER**

2 The Demurrer of Defendant Race Telecommunications, LLC (“Defendant” or “Race”) to
3 the Complaint of Plaintiff Jeremiah Maniquiz (“Plaintiff”) came on regularly for hearing on
4 [Date], in Department S24 of the above-entitled Court, the Honorable Carlos M. Cabrera
5 presiding.

6 The Court, having considered the moving papers, any opposition and reply papers, the
7 arguments of counsel, and the record on file herein, and good cause appearing, makes the
8 following findings and order:

9 **FINDINGS:**

10 **A. Defendant Is Exempt from the Automatic Renewal Law**

11 1. The Complaint defines the putative “Class” at Paragraph 52 as “all persons in
12 California enrolled in Race’s automatically renewing internet service without Race providing
13 clear and conspicuous automatic renewal terms, obtaining affirmative consent, and/or providing
14 a compliant acknowledgment.” This definition derives entirely from the Automatic Renewal Law
15 (“ARL”), Business and Professions Code section 17600 *et seq.*

16 2. Business and Professions Code section 17605, subdivision (b), exempts from the
17 ARL any service provided by a person or entity that is regulated by the California Public Utilities
18 Commission (“CPUC”).

19 3. The Complaint concedes at Paragraph 44 that Race “operates as a
20 telecommunications provider subject to certain oversight by the [CPUC].” This constitutes a
21 binding judicial admission that Race is a CPUC-regulated entity.

22 4. Because Race is regulated by the CPUC, it is exempt from the ARL as a matter of
23 law. The Class definition at Paragraph 52, which is predicated entirely on ARL obligations,
24 therefore fails as a matter of law, and no amendment can cure this deficiency because Race’s
25 CPUC-regulated status is immutable.

1 **B. The Misrepresentation Subclass Allegations Fail for Lack of Commonality**

2 5. The Complaint defines a “Misrepresentation Subclass” at Paragraph 53,
3 predicated on alleged misrepresentations made during individualized telephone interactions
4 between Race’s customer service representatives and putative class members.

5 6. The Complaint’s own factual allegations confirm that each putative class
6 member’s claim turns on individualized telephone interactions with Race’s customer service
7 representatives — interactions that varied from consumer to consumer and cannot be resolved
8 through common proof.

9 7. Class certification of the Misrepresentation Subclass and any class predicated on
10 alleged misrepresentations cannot satisfy the requirements of commonality and predominance
11 under Code of Civil Procedure section 382.

12 8. The Consumer Legal Remedies Act (“CLRA”) claim further requires actual
13 reliance, which cannot be established on a class-wide basis where the alleged misrepresentations
14 were made in varying individualized telephone conversations.

15 9. The Court finds no reasonable possibility that amendment could cure the
16 commonality deficiencies inherent in claims premised on individualized telephone interactions.

17 **C. The UCL Claim Cannot Be Predicated on ARL Violations**

18 10. Count I of the Complaint alleges violations of the Unfair Competition Law (“UCL”),
19 Business and Professions Code section 17200 *et seq.*, in part under the “unlawful” prong based
20 on alleged ARL violations.

21 11. Because Race is exempt from the ARL under Business and Professions Code
22 section 17605, subdivision (b), ARL violations cannot serve as a predicate for a UCL “unlawful”
23 prong claim.

24 12. Because Race’s exemption from the ARL is immutable, the ARL-predicate theory
25 cannot be cured by amendment, and the demurrer to that theory is properly sustained with
26 prejudice. The UCL claim otherwise survives on its remaining predicates, including alleged
27 CLRA violations and conversion.
28

1 **ORDER:**

2 Based on the foregoing findings, and for good cause shown,

3 **IT IS HEREBY ORDERED AS FOLLOWS:**

4 1. The Demurrer to the Class definition at Paragraph 52 of the Complaint is
5 **SUSTAINED WITH PREJUDICE**. The Class definition is predicated entirely on the ARL,
6 from which Defendant is exempt as a matter of law. Because Defendant’s CPUC-regulated status
7 cannot change, no amendment can cure this deficiency.

8 2. The Demurrer to the Misrepresentation Subclass definition at Paragraph 53 of the
9 Complaint, and to all class allegations predicated on individualized misrepresentations, is
10 **SUSTAINED WITH PREJUDICE**. The Court finds no reasonable possibility that amendment
11 could cure the commonality deficiencies inherent in claims dependent on individualized
12 telephone interactions that varied from consumer to consumer.

13 3. The Demurrer to Count I (UCL, Bus. & Prof. Code § 17200 *et seq.*), to the extent
14 it relies on alleged ARL violations as a predicate under the “unlawful” prong, is **SUSTAINED**
15 **WITH PREJUDICE**. The UCL claim survives on its remaining predicates, including alleged
16 CLRA violations and conversion.

17 4. Defendant’s counsel is directed to give notice of this Order.

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19 Dated: _____
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21 _____
22 Hon. Carlos M. Cabrera
23 Judge of the Superior Court
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6 Attorneys for Defendant,
RACE TELECOMMUNICATIONS, LLC
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9 **SUPERIOR COURT OF CALIFORNIA**
COUNTY OF SAN BERNARDINO
10 **UNLIMITED JURISDICTION**
11

12 JEREMIAH MANQUIZ, individually, and on behalf
of other members of the general public similarly
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16 RACE TELECOMMUNICATIONS, LLC, and
DOES 1-20,

17 Defendants.
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Case No.: CIVSB2621521
Hon. Carlos M. Cabrera
Dept. S24

PROOF OF SERVICE

*(Filed concurrently with Demurrer; Motion
to Strike; Declarations of Matthew Follett;
and [Proposed] Orders)*

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is Fox Rothschild LLP, 345 California Street, Suite 2200, San Francisco, California 94104.

On October 6, 2026, I served the following document(s) described as

NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT BY DEFENDANT RACE TELECOMMUNICATIONS, LLC;

NOTICE OF MOTION TO STRIKE AND MOTION TO STRIKE PORTIONS OF COMPLAINT BY DEFENDANT RACE TELECOMMUNICATIONS, LLC;

DECLARATION OF MATTHEW FOLLETT IN SUPPORT OF DEMURRER BY DEFENDANT RACE TELECOMMUNICATIONS, LLC;

DECLARATION OF MATTHEW FOLLETT IN SUPPORT OF MOTION TO STRIKE BY DEFENDANT RACE TELECOMMUNICATIONS, LLC;

[PROPOSED] ORDER GRANTING DEMURRER BY DEFENDANT RACE TELECOMMUNICATIONS, LLC;

[PROPOSED] ORDER GRANTING MOTION TO STRIKE BY DEFENDANT RACE TELECOMMUNICATIONS, LLC;

PROOF OF SERVICE

on the interested parties in this action as follows:

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
LAW OFFICES OF TODD M. FRIEDMAN
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mgeorge@toddfllaw.com

Attorneys for Plaintiff JEREMIAH MANQUIZ

1 **[XX] BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
2 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
3 document(s) to be sent from e-mail address kheinen@foxrothschild.com to the persons at the e-
4 mail addresses listed above. I did not receive, within a reasonable time after the transmission, any
5 electronic message or other indication that the transmission was unsuccessful.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing
7 is true and correct.

8 Executed on October 6, 2026, at San Francisco, California.

9 /s/ Kaitlin Heinen
10 Kaitlin Heinen
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