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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ERIK SHAPIRO, individually, and on) Case No. 2:16-cv-04698-RGK-
 14 all others similarly situated,) (MRWx)
 15)
 16 Plaintiff,) **PLAINTIFF’S OPPOSITION TO**

17 vs.) **DEFENDANT’S MOTION TO**

18 T-MOBILE USA, INC.,) **DISMISS FIRST AMENDED**

19 Defendant.) **COMPLAINT**
 20)
 21) Date: October 24, 2016
 22) Time: 9:00 A.M.
 23) Courtroom: 850
 24) Judge: Hon. Gary R. Klausner
 25)
 26)
 27)
 28)

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ALLEGATIONS**

3 In its Motion to Dismiss the First Amended Complaint, Dkt. No. 19-1
4 (“MTD”), T-MOBILE USA, INC. (“Defendant”) attempts to throw every
5 argument it can think of in order to overwhelm the Court. But throughout all of its
6 arguments, it seems woefully or intentionally ignorant of the underlying issue in
7 this matter: Defendant performed a hard credit inquiry on Plaintiff Erik Shapiro’s
8 (“Plaintiff”) credit after being specifically instructed not to do so and agreeing not
9 to do so, and a hard credit inquiry results in a decrease of the individual’s credit
10 score. Defendant’s Plaintiff alleges two issues on behalf of himself and the
11 proposed class: (1) whether Defendant’s practice of running hard credit inquiries
12 without permission and contrary to its representations violates the Federal and
13 California Credit Reporting Acts; and (2) whether Defendant’s practice of doing so
14 is an unfair, unlawful, or deceptive business practice?
15

16 Plaintiff brings this Class action against Defendant for violations of the Fair
17 Credit Reporting Act (“FCRA”), California’s Consumer Credit Reporting
18 Agencies Act (“CCCRAA”), California’s Unfair Competition Law (“UCL”), and
19 California’s Consumer Legal Remedies Act (“CLRA”). Defendant argues that
20 Plaintiff has failed to state a claim or injury under 12(b)(6) for each of Plaintiff’s
21 claims. However, Plaintiff clearly and concisely stated sufficient facts to support
22 its claims that Defendant wrongly ran a hard credit inquiry on his account after
23 being specifically told and agreeing not to do so, and that this hard credit inquiry
24 caused damage to Plaintiff. Further, Defendant raises the specter of *Spokeo*), but
25 in doing so ignores both the outcome of that case and how Court’s have interpreted
26 the issue subsequently. Defendant attempts to ignore all of the facts Plaintiff has
27 plead, despite being the foundation requirement of a 12(b)(6) motion.
28

Plaintiff submits this Opposition to Defendant’s Motion to Dismiss

1 Complaint to make clear the legal and factual bases for his claims as were pled
2 adequately in the Complaint.

3 **II. FACTUAL ALLEGATIONS**

4 On June 28, 2016, Plaintiff filed his Complaint in the Central District of
5 California. Dkt. No. 1. On August 26, 2016, Defendant filed its first Motion to
6 Dismiss. Dkt. No. 13-1. Plaintiff amended as a matter of right in response to
7 Defendant's first Motion and filed his First Amended Complaint on September 12,
8 2016. Dkt. No. 17 ("FAC"). On September 26, 2016, Defendant filed its Motion
9 to Dismiss the First Amended Complaint, notably removing certain arguments that
10 Plaintiff had "cured" and asserting other ones. Dkt. No. 19-1. The operative facts
11 from the First Amended Complaint are as follows.

12 On or about February 5, 2014, Plaintiff spoke with a representative of
13 Defendant in order to inquire about phone plans. FAC ¶ 13. During this call,
14 Defendant's representative asked to perform a soft credit check on Plaintiff's
15 credit history. *Id.* at ¶ 14. Plaintiff asked Defendant's representative if the inquiry
16 would appear on his credit report and was told that it would not as it was a soft
17 inquiry. *Id.* Despite Defendant's representations, Defendant ran a hard credit
18 inquiry which appeared on Plaintiff's credit report. *Id.* at ¶ 17. When Plaintiff
19 contacted Defendant on or about February 7, 2014, another of Defendant's
20 representatives informed Plaintiff that Defendant only performed hard inquiries,
21 and that the previous representation had thus been false. *Id.* at ¶ 20.

22 Plaintiff filed an online dispute with the three credit reporting agencies in
23 regards to Defendant's unauthorized inquiry on or about November 2014. *Id.* at
24 ¶ 23. Defendant is alleged to be an "information furnisher" as defined by the FCRA
25 and CCRAAA. *Id.* at ¶ 8. Despite Plaintiff's dispute in accordance with the
26 FCRA, Defendant failed to perform a reasonable investigation and did not remove
27 Defendant's unauthorized hard inquiry from Plaintiff's credit reports. *Id.* at ¶ 24.
28

1 Defendant's unauthorized hard inquiry on Plaintiff's credit caused
2 Plaintiff's credit score to decrease. *Id.* at ¶ 34. Further, Plaintiff has incurred
3 costs and expense in attempting to correct Defendant's unauthorized credit
4 inquiry through its contact with Defendant and disputes with the Credit Reporting
5 Agencies. *Id.*

6 Plaintiff brings this action on behalf of himself and a class of all persons
7 who, within the last four years, had hard inquiries performed on his or her credit
8 reports by Defendant without authorization. *Id.* at ¶ 35. Plaintiff alleges that
9 Defendant violated the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.,
10 California Consumer Credit Reporting Agencies Act, Cal. Civ. C. § 1785.25 et
11 seq., Unfair Competition Law, Cal. Bus. & Prof. C. § 17200 et. seq., and
12 Consumer Legal Remedies Act, Cal Civ. C. § 1770 et. seq. *Id.* at ¶¶ 48-77.
13 Additionally and in particular, Defendant violated 15 U.S.C. § 1681b by obtaining
14 a consumer report in which Plaintiff did not authorize to be involved in. *Id.* at ¶¶
15 71, 76. Plaintiff seeks on behalf of himself and the class an injunction to cease
16 Defendant's practice of running hard credit inquiries without authorization, and
17 actual and statutory damages pursuant to the FCRA, CCCRAA, and CLRA. *Id.*
18 at ¶¶ 65, 72, 77.

19
20 Plaintiff has stated sufficient facts to state a claim upon which relief may
21 be granted. Accordingly, for these reasons, and reasons discussed in more detail
22 below, Plaintiff respectfully requests that this Honorable Court deny Defendant's
23 Motion to Dismiss, in its entirety.

24 **III. LEGAL STANDARD**

25 **a. Rule 12(b)(6)**

26 A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P.
27 12(b)(6) tests the legal sufficiency of the claims in the complaint. The court must
28 accept as true all material allegations in the complaint, as well as reasonable

1 inferences to be drawn from them, and must construe the complaint in the light
2 most favorable to plaintiffs. *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480,
3 1484 (9th Cir. 1995); *N.L. Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).
4 A complaint should not be dismissed unless a plaintiff could prove no set of facts
5 in support of his claim that would entitle him to relief, and amendment would be
6 futile. *Everest & Jennings, Inc. v. American Motorists Ins. Co.*, 23 F.3d 226, 228
7 (9th Cir.1994). It is an abuse of discretion to deny discovery unless the “necessary
8 factual issues may be resolved without discovery.” *See Doninger v. Pacific*
9 *Northwest Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir. Wash. 1977) (Emphasis added).

10 **IV. LEGAL ARGUMENT**

11 **A. Plaintiff Has Adequately Pled A Claim Under FCRA**

12 **i. Plaintiff Has Asserted A Concrete Injury Under *Spokeo***

13 Defendant’s hoopla regarding *Spokeo* is much ado about nothing. To
14 establish Article III standing, an injury must be “concrete, particularized, and actual
15 or imminent; fairly traceable to the challenged action; and redressable by a
16 favorable ruling.” *Clapper v. Amnesty Int’l USA*, 133 S.Ct. 1138, 1147 (2013). In
17 *Spokeo*, the Supreme Court addressed the injury-in-fact requirement for Article III
18 standing, especially the concrete injury requirement, as applied to a plaintiff
19 seeking statutory damages. Specifically, “standing consists of three elements.”
20 *Spokeo*, 136 S.Ct. at 1547 (citing *Lujan*, 504 U.S. at 560). “The plaintiff must have
21 (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct
22 of the defendant, and (3) that is likely to be redressed by a favorable judicial
23 decision.” *Id.* The Supreme Court further confirmed that to establish injury in fact,
24 a plaintiff must “allege an injury that is both ‘concrete’ and ‘particularized.’” *Id.*
25 at 1545 (citing *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs., Inc.*, 528 U.S.
26 167, 180–81 (2000)). According to the Supreme Court, a “particularized” injury
27
28

1 “must affect that plaintiff in a personal and individual way.” *Spokeo*, 136 S. Ct. at
2 1548. None of this changed the law.

3 In *Spokeo*, although defense sought a ruling that would have changed the law
4 and eviscerated causes of action seeking statutory damages, the Supreme Court,
5 instead, issued a narrow ruling remanding the case to the Ninth Circuit solely on
6 the basis that it had failed to address the extent to which Robins’ injuries were
7 “concrete” as opposed to merely “particularized.” *Id.* at 1545. The Supreme Court
8 explicitly took no position on whether plaintiff’s injuries were in fact concrete for
9 standing purposes. *Id.* at 1550. *Spokeo* thus creates no new law.

10 *Spokeo* confirmed that a “concrete” injury “must actually exist.” *Id.*
11 However, a “concrete” injury may be “intangible.” *Id.* at 1548. Congress may
12 identify and “elevate to the status of legally cognizable injuries concrete, de facto
13 injuries that were previously inadequate at law.” *Id.* Congress “has the power to
14 define injuries and articulate chains of causation that will give rise to a case or
15 controversy where none existed before” because Congress “is well positioned to
16 identify intangible harms that meet minimum Article III requirements.” *Id.* The
17 Court noted that merely asserting a “bare procedural violation, divorced from any
18 concrete harm,” would not satisfy the concreteness requirement. *Id.* However, for
19 procedural rights, a “risk of real harm” can satisfy Article III. *Id.* “[T]he violation
20 of a procedural right granted by statute can be sufficient in some circumstances to
21 constitute injury in fact. In other words, a plaintiff in such a case need not allege
22 any additional harm beyond the one Congress has identified.” *Id.*

24 The overwhelming majority of reviewing courts who have been asked,
25 following *Spokeo* to review Article III standing issues for cases involving statutory
26 violations impacting privacy rights or other related consumer rights have similarly
27 upheld the claims:

- 28 • *Thomas v. FTS USA, LLC*, 2016 WL 3653878 (E.D. Va. June 30,

1 2016) (Denying Motion for Summary Judgment post-certification, the
 2 Court found that the FCRA granted a right to privacy and Plaintiff had
 standing to sue);

- 3 • *Guarisma v. Microsoft Corp.*, No. 15-24326-CIV, 2016 WL 4017196
 4 (S.D. Fla. July 26, 2016) (holding that a violation of FACTA was
 sufficient to incur standing on Plaintiff to preclude dismissal);
- 5 • *Mey v. Got Warranty, Inc.*, No. 5:15-CV-101, 2016 WL 3645195
 6 (N.D.W. Va. June 30, 2016) (Violation of TCPA grants standing to
 preclude dismissal);
- 7 • *Caudill v. Wells Fargo Home Mortgage, Inc.*, No. CV 5: 16-066-DCR,
 8 2016 WL 3820195 (E.D. Ky. July 11, 2016) (same);
- 9 • *Dickens v. GC Servs. Ltd. P'ship*, No. 8:16-CV-803-T-30TGW, 2016
 10 WL 3917530 (M.D. Fla. July 20, 2016) (Failure to comply with
 FDCPA provides standing to Plaintiff to preclude dismissal);
- 11 • *Church v. Accretive Health, Inc.*, No. 15-15708, 2016 WL 3611543
 12 (11th Cir. July 6, 2016) (same);
- 13 • *In re Robinson*, No. 15-30223, 2016 WL 4069395, (Bankr. W.D. La.
 14 July 28, 2016) (same);
- 15 • *McCamis v. Servis One, Inc.*, No. 8:16-CV-1130-T-30AEP, 2016 WL
 16 4063403, (M.D. Fla. July 29, 2016) (same);
- 17 • *Nyberg v. Portfolio Recovery Associates, LLC*, No. 3:15-CV-01175-
 18 PK, 2016 WL 3176585, at *7 (D. Or. June 2, 2016) (same);

19 These are but some of the cases that have come down since *Spokeo*.
 20 Defendant cites to practically no authority in support of its position. That's because
 21 there is no authority that supports its position. Defendant's Motion is baseless and
 22 should be summarily denied.

23 ii. Plaintiff's Claims Arise Within Thirty Days Of November 2014
 24 When Plaintiff Submitted Disputes, Such That They Are Not
 25 Barred By The Statute Of Limitations

26 Plaintiff in his FAC alleges that Defendant violated the federal Fair Credit
 27 Reporting Act, 15 U.S.C. § 1681, by providing derogatory and inaccurate
 28 information relating to Plaintiff to credit reporting agencies. FAC at ¶ 33, 34, 41.
 Plaintiff pled that Defendant violated 15 U.S.C. §1681s-2(b) which creates a
 private right of action for consumers for incorrectly reported information after it

1 is disputed by the consumer.¹ *Id.* at ¶ 70. “An action to enforce any liability
 2 under this subchapter may be brought . . . within two years from the date on which
 3 liability rises” *Andrews v. Trans Union Corp. Inc.*, 7 F. Supp. 2d 1056, 1066
 4 (C.D. Cal. 1998), aff'd in part, rev'd in part sub nom. Andrews v. TRW, Inc., 225
 5 F.3d 1063 (9th Cir. 2000), as amended (Oct. 4, 2000), rev'd and remanded, 534
 6 U.S. 19, 122 S. Ct. 441, 151 L. Ed. 2d 339 (2001), and aff'd sub nom. Andrews v.
 7 TRW Inc., 289 F.3d 600 (9th Cir. 2001) (citing 15 U.S.C. § 1681p). Furnishers
 8 duties and liability are triggered “upon notice of dispute” from a Credit Reporting
 9 Agency to whom the consumer disputed the information. 15 U.S.C. § 1681s-2(b).
 10 *See also Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1154 (9th Cir.
 11 2009). Thus, Defendant’s liability was triggered within thirty (30) days of the
 12 dispute to the Credit Reporting Agencies made in November 2014, as Defendant
 13 itself notes that disputes directly to the Credit Furnisher do not trigger 15 U.S.C.
 14 1681s-2(b) liability. FAC at ¶ 23. Thus, Plaintiff’s Complaint, filed on June 28,
 15 2016, was timely as it applies to the FCRA and within two years of the date of
 16 liability. Dkt. No. 1.

18 iii. Defendant Is A Credit Furnisher

19 Defendant furnished information to the Credit Reporting Agencies by
 20 running a hard inquiry on Plaintiff’s credit report. While the information
 21 furnished was specifically not authorized by Plaintiff, this information still related
 22 to a transaction by Defendant for which Defendant caused information to appear
 23 on Plaintiff’s credit report and transmitted to other individuals. While the issue
 24 of whether an entity that causes a hard inquiry to occur qualifies as a furnisher is
 25 an open question for which there is not significant guidance, in *Obarski v. United*
 26

27 ¹ Congress passed the Consumer Credit Reporting Reform Act of 1996 to create
 28 this private right of action against information furnishers under the FCRA. Public
 Law No. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

1 *Collection Bureau, Inc.*, 2013 WL 5937412, at *2 (D.N.J. Nov. 4, 2013), the Court
2 briefly discussed how a collection agency could qualify as a “furnisher of
3 information,” before ultimately determining that the information reported was
4 accurate due to defendant meeting the requirements of 15 U.S.C. § 1681b. In
5 *Lopez v. JP Morgan Chase Bank, Nat'l Ass'n*, 2016 WL 2990982, at *2 (N.D.
6 Ohio May 24, 2016), the Court noted that Chase would be subject to the
7 investigation requirements of 15 U.S.C. § 1681s-2. As such, Defendant’s narrow
8 reading of the definition of an “information furnisher” is not supported by cases
9 dealing with disputes relating to credit inquiries, and thus Defendant should be
10 subject to 15 U.S.C. § 1681s-2.

11 Finally, to the extent that the Court determines Defendant is not a Credit
12 Furnisher, Defendant is still a “User” of credit reporting and thus still subject to
13 certain requirements of the FCRA and CCCRAA as pled elsewhere in Plaintiff’s
14 FAC and argued in this Motion.

15
16 iv. Plaintiff Has Standing As He Disputed The Reporting With the
17 Credit Reporting Agencies

18 Defendant cites to *Roybal v. Equifax*, 405 F. Supp. 2d 1177 (E.D. Cal.
19 2005) in support of its position that Plaintiff failed to plead that he had sufficiently
20 disputed the issue with the Credit Reporting Agencies, but many courts disagree
21 with *Roybal* and this ignores Plaintiff’s full allegations. Plaintiff pled that despite
22 Plaintiff’s dispute, Defendant failed to perform a reasonable investigation and
23 Defendant’s unauthorized hard inquiry was not removed from Plaintiff’s credit
24 report. FAC at ¶ 24. This fact pattern as pled is similar to
25 *Banga v. Allstate Ins. Co.*, 2009 WL 3073925 (E.D. Cal. Sept. 22, 2009). In
26 *Banga*, the Court found that plaintiff had satisfactorily pled the investigation
27 requirements of 15 U.S.C. § 1681 s-2(b) because she had reported her dispute to
28 the Credit Reporting Agencies and defendant had not corrected the information.

1 *Id.* at *7 (citing the failure as being sufficient pursuant to *Gorman v. Wolfpoff &*
2 *Abramson, LLP*, 552 F.3d 1008 (9th Cir. 2009)).

3 Further, other Courts have strongly disagreed with the holding of *Roybal*,
4 finding that Credit Reporting Agencies have no obligation under 15 U.S.C.
5 §1681i(a)(3) to preliminarily assess a consumer dispute’s viability, and thus the
6 Credit Reporting Agencies evaluation of Plaintiff’s claim would not effect his suit
7 against Defendant. *Vartanian v. Portfolio Recovery Associates, LLC*, 2013 WL
8 877863, at *4 (C.D. Cal. Mar. 7, 2013). *See also*
9 *Baker v. Midland Funding LLC*, 2014 WL 2205674, at *2 (D. Ariz. May 28,
10 2014) (“Plaintiff need not plead every detail of the transaction in order to state a
11 claim.”). Plaintiff has sufficient pled that he disputed the reporting with the Credit
12 Reporting Agencies and that the information was not corrected, thus sufficiently
13 demonstrating standing.
14

15 v. Plaintiff States A Claim That Defendant Violated 1681n and b
16 of the FCRA

17 Defendant next argues that Plaintiff has failed to adequately alleged a claim
18 under 15 U.S.C. § 1681(b)(a)(3)(A) by arguing that 15 U.S.C. § 1681(n)(a)(1)(B)
19 only applies to natural persons which excludes corporations. While it is true that
20 “natural person” as defined in 15 U.S.C. § 1681n(a)(1)(B) may only apply to
21 individuals,² the use and acquisition of a credit report for an impermissible
22 purpose is still actionable against a Corporation under 15 U.S.C. §
23 1681n(a)(1)(A). The Ninth Circuit considered the issue of liability for a tow truck
24 company in impermissibly requesting a person-to-be-towed’s credit report in
25 *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 676 (9th Cir. 2010), and overruled
26

27 _____
28 ² As a matter of history, 15 U.S.C. § 1681n(a)(1)(B) was codified as a private
cause of action for 15 U.S.C. § 1681q which provides for criminal penalties.

1 a motion for summary judgment, thus permitting plaintiff to proceed on her
 2 claims. In *Grigoryan v. Convergent Outsourcing, Inc.*, 2012 WL 4475455, at *3
 3 (C.D. Cal. Sept. 24, 2012), the Court similarly denied defendant’s motion for
 4 judgment on the pleadings because obtaining a credit report without a permissible
 5 purpose is a violation of 15 U.S.C. § 1681b(f). As Plaintiff has sufficiently pled
 6 that he specifically instructed Defendant’s not to perform a hard inquiry, he has
 7 pled that Defendant’s violated 15 U.S.C. § 1681b and this subjects them to
 8 liability under § 1681n. Defendant’s Motion to Dismiss should be denied.

9 **B. Plaintiff Has Adequately Pled A Claim Under The CCCRAA**

10 Defendant mirrors its FCRA arguments as to the alleged inadequacies of
 11 Plaintiff’s CCCRAA claim, and these arguments are equally unconvincing.
 12 “Because the Credit Reporting Act is substantially based on the Federal Fair
 13 Credit Reporting Act (15 U.S.C. §§ 1681–1681t), judicial interpretation of the
 14 federal provisions is persuasive authority and entitled to substantial weight when
 15 interpreting the California provisions.” *Olson v. Six Rivers Nat. Bank*, 111
 16 Cal.App. 4th 1, 12 (2003). In *Grigoryan v. Convergent Outsourcing, Inc.*, 2012
 17 WL 4475455, at *3 (C.D. Cal. Sept. 24, 2012), the Court also denied defendant’s
 18 motion for judgment on the pleadings as to the CCCRAA because the limitations
 19 on the release of information are essentially identical to 15 U.S.C. § 1681b(f).
 20 Further, to the extent the Court finds that Defendant is an information furnisher
 21 as argued above, the same would apply pursuant to the CCCRAA. As in
 22 *Grigoryan*, the Court should deny Defendant’s Motion to Dismiss as to Plaintiff’s
 23 CCCRAA claim because liability still exists under the CCCRAA.
 24

25 **C. Plaintiff Has Adequately Pled Violation Of The CLRA**

- 26 i. Plaintiff Has Complied With the Notice Requirement Of
 27 The CLRA

28 Defendant fails to read Plaintiff’s CLRA letter in its argument that Plaintiff

1 did not specifically plead the conduct at issue. As Plaintiff attached his notice
2 letter to both his initial complaint and the FAC, Plaintiff will now address how
3 Defendant was put on notice. On page two (2) of Plaintiff's CLRA letter to
4 Defendant, Plaintiff informed Defendant that his claims were based on
5 Defendant's hard inquiry on February 5, 2014, even though Defendant had
6 represented that it would be a soft inquiry—and as significantly mirrored in the
7 Complaint. FAC at p. 21. Plaintiff then proceeds to specifically note that
8 Defendant violated Cal. Civ. C. § 1770 subsections 5, 7, 9, 14, and 16 by
9 engaging in its false representations as to the nature of the inquiries. *Id.* at p. 21-
10 22. It is unclear how Defendant can argue that is not specifying the specific
11 violations of the CLRA, and appears to be double-speak, as Defendant then
12 proceeds to address how the specific sections identified by Defendant are not met
13 in its MTD.
14

15 ii. Plaintiff Has Alleged How Defendant's Misrepresentations
16 Relating To Its Services Violated the CLRA

17 Defendant argues that the nature of the credit inquiry it performed against
18 Plaintiff is unrelated to its business, but this ignores that its representation as to
19 the type of credit check to be performed is integral to the sale of its products and
20 services. Defendant performs credit inquiries in order to provide pricing to
21 consumers. FAC at ¶ 26. Thus, the nature of those credit inquiries is also related
22 to the "pricing" of its products because there is an associated cost from a hard
23 inquiry as compared to a soft inquiry—namely a decrease in credit as suffered by
24 Plaintiff. *Id.* at ¶ 34. Thus, as part of the transaction for goods and services, the
25 type of inquiry performed in obtaining and pricing those services is directly
26 related to the characteristics of the goods (Cal. Civ. C. § 1770(a)(5)), the way in
27 which the goods are advertised and sold ((a)(7)), the rights of the transaction
28 ((a)(14)), and the subject of a transaction ((a)(16)). Defendant cannot both argue

1 that running a credit inquiry is integral to its pricing, and yet completely unrelated
 2 to the sale of its goods and services. As such, Plaintiff has sufficiently pled how
 3 the potential transaction meets the requirements of the CLRA.

4 **D. Plaintiff Has Adequately Pled His UCL Claims**

5 i. Plaintiff Has Standing Under The UCL

6 Defendant puts forth the wrong standard for determining standing under the
 7 UCL, ignoring that Plaintiff’s pleadings meet the correct standard. “Allegations
 8 of a diminished credit score have been found to satisfy the UCL’s standing
 9 requirement.” *King v. Bank of Am., N.A.*, 2012 WL 4685993, at *8 (N.D. Cal.
 10 Oct. 1, 2012).³ Plaintiff pled that Defendant’s unauthorized hard inquiry resulted
 11 in a decrease in his credit score. FAC at ¶ 34. Additionally, Plaintiff has pled
 12 that he incurred costs and damages associated with disputing the inaccurate
 13 reporting. *Id.* Plaintiff’s allegations are sufficient to establish standing under the
 14 UCL.

15 ii. Plaintiff’s UCL Claim Is Not Predicated Only On The CLRA

16 While Defendant is correct in arguing that Plaintiff’s “unlawful” prong of
 17 the UCL is predicated on his CLRA claim, Plaintiff also alleged two fully
 18 separate prongs: unfair and fraudulent. FAC at ¶¶ 50-60. While Defendant
 19 does not address these two other separate prongs, Plaintiff will briefly address
 20 how he met the burden on those other elements.
 21

22
 23 ³ See also *White v. Trans Union LLC*, 462 F.Supp.2d 1079, 1080, 1084 (C.D. Cal.
 24 2006) (finding UCL standing where plaintiffs alleged on behalf of a class that
 25 TransUnion had “employ[ed] credit reporting practices that they allege falsely
 26 declare their discharged debts to be ‘due and owing’ and thereby inappropriately
 27 taint Plaintiffs’ credit reports”) (cited with approval in *Rubio v. Cap. One Bank*,
 28 613 F.3d 1195, 1204 (9th Cir. 2010)); *Aho v. AmeriCredit Fin. Servs., Inc.*, 2011
 WL 2292810, at *2 (S.D.Cal. June 8, 2011) (finding economic injury where
 plaintiff alleged that “his credit report has been negatively affected by
 Defendant’s reporting of the deficiency to credit reporting agencies”).

1 The UCL prohibits any “unlawful, unfair, or fraudulent business act or
2 practice.” Cal. Bus. & Prof. C. § 17200. “An act or practice is unfair if the
3 consumer injury is substantial, is not outweighed by any countervailing benefits
4 to consumers or to competition, and is not an injury the consumers themselves
5 could reasonably have avoided.” *Daugherty v. American Honda Motor Co.,*
6 *Inc.*, 144 Cal.App.4th 824, 839 (2006). As to the unfair prong, Plaintiff
7 specifically pled how the alleged facts demonstrate unfair conduct. Plaintiff
8 pled that Defendant’s unauthorized hard inquiries caused injury to consumers’
9 credit ratings. FAC at ¶ 52. Defendant’s unauthorized hard inquiries provides
10 no benefit to the individuals. FAC at ¶ 53. Defendant unilaterally ran the hard
11 inquiries on Plaintiff and members of the Class “over their objections, such that
12 they could not have reasonably avoided Defendant’s conduct. *Id.* at ¶¶ 54.
13 Plaintiff has adequately pled the “unfair” prong of the UCL.
14

15 As to the fraudulent prong, Plaintiff has alleged that T-Mobile (who), on or
16 about February 2014 (when), ran an unauthorized hard inquiry on Plaintiff’s
17 credit report (what / where). FAC at ¶¶ 14-22. Plaintiff further alleged that he
18 and class members sustained damages from the unauthorized hard inquiry. *Id.* at
19 ¶ 59. Plaintiff has adequately pled the “fraudulent” prong of the UCL.

20 **E. The Proper Course Of Action, Should The Court Grant**
21 **Defendant’s 12(b)(6) Claim, Is A Grant Of Leave To Amend.**

22 Federal Rule of Civil Procedure 15(a) provides that a trial court shall grant
23 leave to amend freely “when justice so requires.” The Supreme Court has stated
24 that “this mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).
25 Review of denial of leave to amend is strictly reviewed in light of the strong policy
26 permitting amendment. *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 798 (9th Cir.
27 1991). As such, even if the Court should grant Defendant’s Motion, in part, it
28 should grant Plaintiff leave to amend. Defendant has failed to show that Plaintiff’s

1 amendment would be “futile” such that leave to amend should be denied. As
2 Plaintiff has asserted throughout this Memorandum, Plaintiff has plead sufficient
3 facts to overcome a 12(b)(6) Motion to Dismiss, but should the Court rule that it
4 has not, Plaintiff seeks leave to amend freely with additional facts to meet that low
5 burden. Plaintiff’s amendments would not be “futile” as he could add additional
6 facts and documents to support his claims at the pleading stage, if the Court rules
7 it to be required.

8 **V. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests the Court deny
10 Defendant’s motion in its entirety. Should the Court grant Defendant’s Motion, in
11 whole or in part, Plaintiff respectfully requests leave to amend the complaint.
12

13 Dated: October 3, 2016

Respectfully submitted,

14 LAW OFFICES OF TODD M. FRIEDMAN, PC

15
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1 Filed electronically on this 3rd Day of October, 2016, with:

2 United States District Court CM/ECF system
3

4 Notification sent electronically via the Court's ECF system to:

5 Honorable Gary R. Klausner
6 United States District Court
7 Central District of California

8 And All Counsel of Record on the electronic service list.

9

10 This 3rd Day of October, 2016.

11

12 s/Todd M. Friedman, Esq.
13 Todd M. Friedman

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