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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Vlaho Miletak,
Plaintiff,
v.
Allstate Insurance Company, et al.,
Defendants.

NO. C 06-03778 JW

**ORDER DENYING DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT;
GRANTING PLAINTIFF’S MOTION FOR
CLASS CERTIFICATION**

I. INTRODUCTION

Vlaho Miletak (“Plaintiff”) brings this putative class action against Allstate Insurance Company and Allstate Indemnity Company (“Defendants” or “Allstate”), alleging, *inter alia*, violation of Cal. Bus. & Prof. Code § 17200, *et seq.* and unjust enrichment. Plaintiff alleges that Defendants used misleading bills to obtain payment of insurance premiums thirty or more days before the renewal date of insurance policies between the parties.

Presently before the Court are Defendants’ Motion for Summary Judgment or Partial Summary Judgment¹ and Plaintiff’s Motion for Class Certification.² The Court conducted a hearing on February 1, 2010. Based on the papers submitted to date and oral argument, the Court DENIES Defendants’ Motion for Summary Judgment and GRANTS Plaintiff’s Motion for Class Certification.

¹ (hereafter, “Defendants’ Motion,” Docket Item No. 206.)

² (hereafter, “Plaintiff’s Motion,” Docket Item No. 234 (filed under seal).)

1 **II. BACKGROUND**

2 **A. Factual Allegations**

3 In a Fourth Amended Complaint filed on September 30, 2008, Plaintiff alleges as follows:

4 Plaintiff is a California resident; Defendants are Illinois corporations.³ Beginning on
5 or around January, 1, 2002, Plaintiff purchased automobile insurance policies from Allstate.
6 (FAC ¶ 12.) During this time, Plaintiff paid premiums according to Allstate’s standardized
7 billing statements (“Statements”). (Id.) The Statements uniformly and deceptively stated
8 that premiums were due one month before the actual due date. (Id.) The Statements
9 requested that payment be sent by mail “no later than” thirty-five days before the actual due
10 date if sending the payment by mail to “allow time for mail and processing.” (Id.)

11 Plaintiff did not know that Allstate’s representations and omissions regarding the due
12 date were false, and relied on those representations to his detriment. (Id. ¶¶ 28-31.)

13 Defendants benefitted by collecting interest on the early premium payments. (Id. ¶¶ 41-42.)

14 On the basis of the allegations outlined above, Plaintiff alleges eight causes of action: (1)
15 breach of contract, (2) breach of the covenant of good faith and fair dealing, (3) breach of fiduciary
16 duty, (4) fraud, (5) constructive fraud, (6) negligent misrepresentation, (7) unjust enrichment, and
17 (8) violation of Cal. Bus. & Prof. Code § 17200, *et seq.*

18 **B. Procedural History**

19 On April 28, 2006, Vlaho and Filka Miletak filed a putative class action in Santa Clara
20 County Superior Court. On May 11, 2006, the Miletaks filed their First Amended Complaint, which
21 contained eight causes of action. On June 15, 2006, Defendant Allstate Insurance Co. timely
22 removed this action to the Northern District of California based on diversity jurisdiction under 28
23 U.S.C. § 1441. (See Docket Item No. 1.)

24 On February 8, 2007, the Court dismissed the First Amended Complaint with leave to amend
25 as to two causes of action only. (See Docket Item No. 42.) On July 18, 2007, the Court dismissed

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27 ³ (Fourth Amended Class Action Complaint ¶¶ 1-4, hereafter, “FAC,” Docket Item No. 175.)

1 both causes of action with prejudice as to Mrs. Miletak only. (See Docket Item No. 53.) Plaintiff
 2 filed a Third Amended Complaint On August 15, 2007,⁴ and with leave of the Court, filed a Fourth
 3 Amended Complaint on June 2, 2008. (See FAC.)

4 In the Fourth Amended Complaint, Plaintiff added Allstate Indemnity as a Defendant and
 5 asserted claims for RICO violations. (See FAC.) In its May 15, 2009 Order, the Court dismissed
 6 with prejudice Plaintiff’s RICO claims but found that Plaintiff sufficiently alleged joint liability
 7 against Allstate Indemnity to survive the pleading stage. (See Docket Item No. 194.)

8 Presently before the Court are Defendants’ Motion for Summary Judgment or Partial
 9 Summary Judgment and Plaintiff’s Motion for Class Certification.

10 **III. STANDARDS**

11 **A. Summary Judgment**

12 Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and
 13 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
 14 material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P.
 15 56(c). The purpose of summary judgment “is to isolate and dispose of factually unsupported claims
 16 or defenses.” Celotex v. Catrett, 477 U.S. 317, 323-24 (1986).

17 The moving party “always bears the initial responsibility of informing the district court of
 18 the basis for its motion” Id. at 323. “The judgment sought should be rendered if the pleadings,
 19 the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue
 20 as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
 21 P. 56(c). The non-moving party “may not reply merely on allegations or denials in its own pleading;
 22 rather, its response must—by affidavits or as otherwise provided in this rule—set out specific facts
 23 showing a genuine issue for trial.” Fed. R. Civ. P. 56(e).

24 When evaluating a motion for summary judgment, the court views the evidence through the
 25 prism of the evidentiary standard of proof that would pertain at trial. Anderson v. Liberty Lobby

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 27 ⁴ (See Docket Item No. 55.)

1 Inc., 477 U.S. 242, 255 (1986). The court draws all reasonable inferences in favor of the non-
2 moving party, including questions of credibility and of the weight that particular evidence is
3 accorded. See, e.g., Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 520 (1992). The court
4 determines whether the non-moving party’s “specific facts,” coupled with disputed background or
5 contextual facts, are such that a reasonable jury might return a verdict for the non-moving party.
6 T.W. Elec. Serv. v. Pac. Elec. Contractors, 809 F.2d 626, 631 (9th Cir. 1987). In such a case,
7 summary judgment is inappropriate. Anderson, 477 U.S. at 248. However, where a rational trier of
8 fact could not find for the non-moving party based on the record as a whole, there is no “genuine
9 issue for trial.” Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

10 **B. Class Certification**

11 The decision to certify a class is committed to the discretion of the district court within the
12 guidelines of Federal Rule of Civil Procedure 23. See Fed. R. Civ. P. 23; Doninger v. Pacific
13 Northwest Bell, Inc., 564 F.3d 1304, 1309 (9th Cir. 1977). The party seeking class certification
14 bears the burden of establishing that each of the four requirements of Rule 23(a) and at least one
15 requirement of Rule 23(b) have been met. Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1176 (9th Cir.
16 2007) (citing Zinser v. Accufix Research Institute, Inc., 253 F.3d 1180, 1186 (9th Cir. 2001),
17 amended, 273 F.3d 1266 (9th Cir. 2001)). A district court may certify a class only if, after “rigorous
18 analysis,” it determines that the party seeking certification has met its burden. General Telephone
19 Co. of the Southwest v. Falcon, 457 U.S. 147, 158-61 (1982).

20 In reviewing a motion for class certification, the court generally is bound to take the
21 substantive allegations of the complaint as true. In re Coordinated Pretrial Proceedings in Petroleum
22 Products Antitrust Litig., 691 F.2d 1335, 1342 (9th Cir. 1982) (citing Blackie v. Barrack, 524 F.2d
23 891, 901 (9th Cir. 1975)). However, the court may look beyond the pleadings to determine whether
24 the requirements of Rule 23 have been met. Hanon v. Dataproducts Corp., 976 F.2d 497, 509 (9th
25 Cir. 1992) (citation omitted). In fact, “courts are not only at liberty to but must consider evidence
26 which goes to the requirements of Rule 23 [at the class certification stage] even [if] the evidence
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1 may also relate to the underlying merits of the case.” Dukes, 509 F.3d at 1178 n.2 (internal
2 quotations and citation omitted).

3 **IV. DISCUSSION**

4 **A. Motion for Summary Judgment**

5 Defendants move for summary judgment on the grounds, *inter alia*, that (1) the relief that
6 Plaintiff seeks amounts to a premium rebate which is prohibited under California’s insurance
7 regulatory scheme, (2) Allstate provided Plaintiff with reasonable notice of the change in his billing
8 schedule and new billing statement, which Plaintiff ignored, and (3) California law does not
9 recognize an independent cause of action for unjust enrichment. (Defendants’ Motion at 11-26.)
10 The Court addresses each grounds in turn.

11 **1. California Insurance Regulatory Scheme**

12 Defendants contend that as a matter of law, California’s statutory framework governing
13 insurance precludes Plaintiff’s claims. (Defendants’ Motion at 11-16.) More specifically,
14 Defendants contend that since any gain the insurance company’s may glean from receiving a
15 premium before its actual due date is counterbalanced by the lower rates that the insurance
16 commissioner will approve, any relief granted to Plaintiff as a result of that gain would constitute
17 improper interference with the insurance commissioner’s sole authority to set rates. (Id. at 11-14.)
18 Defendants further contend that the “filed rate doctrine” bars Plaintiff’s challenge to Allstate’s
19 billing practices. (Id. at 14-16.)

20 The California Insurance Code grants to the commissioner “exclusive jurisdiction over issues
21 related to ratemaking.” Walker v. Allstate Indem. Co., 77 Cal. App. 4th 750, 755 (Cal. Ct. App.
22 2000). Cal. Ins. Code § 1861.05(a) provides that “[n]o rate shall be approved or remain in effect
23 which is excessive, inadequate, [or] unfairly discriminatory.” When determining whether a rate is
24 excessive, inadequate or unfairly discriminatory, “the commissioner shall consider whether the rate
25 mathematically reflects the insurance company’s investment income.” Cal. Ins. Code § 1861.05(a).

26 An insurer is entitled to the full payment on the first day of policy coverage. Id. § 480. An
27 insurer is also required to deliver by mail, “at least twenty days before expiration, a written or verbal
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1 offer of renewal of the policy, contingent upon payment of premium as stated in the offer.” Id. §
2 663.

3 Here, Plaintiff seeks relief from Defendants in the form of “full restitution and disgorgement
4 of all monies, revenues and benefits of the monies wrongfully obtained and the value of the early use
5 of such monies.” (FAC at 15.) Since Plaintiff only seeks return of the value of the interest that
6 Defendants earned over the thirty days that they had use of Plaintiff’s premium payments before
7 they were due, and not the premium payments themselves, the Court finds that Plaintiff’s monetary
8 recovery would not constitute a rebate or rate reduction. Although any benefit that Defendants
9 receive in the short-term through the use of early-received premiums may eventually result in lower
10 rates, pursuant to Cal. Ins. Code § 1861.05(a), the possibility of such a rate reduction at some
11 unspecified future date is far too uncertain and indirect to compensate Plaintiff if Defendants’
12 actions are found unlawful.

13 Furthermore, the Court finds that the filed rate doctrine is inapplicable to the circumstances
14 here, and thus lends no support to Defendants’ contention that Plaintiff’s claims are barred. “The
15 filed rate doctrine . . . bar[s] challenges under state law and federal antitrust laws to rates set by
16 federal agencies.” E. & J. Gallo Winery v. EnCana Corp., 503 F.3d 1027, 1033-34 (9th Cir. 2007).
17 The doctrine does not directly apply to a situation, as here, involving potential interference with
18 rates set by a state agency rather than a federal agency.

19 Moreover, at least one California appellate court has rejected the premise that California’s
20 “prior approval” system is analogous to the federal filed rate doctrine. See Fogel v. Farmers Group,
21 Inc., 160 Cal. App. 4th 1403, 1418 (Cal. Ct. App. 2008). In Fogel, the court expressly rejected the
22 defendant’s claim that the plaintiff’s lawsuit was barred because the relief he sought was effectively
23 a premium refund. Id. The Fogel court’s reasoning is equally applicable here:

24 Although there are some similarities between the federal tariff system and
25 California’s “prior approval” system governing insurance rates, there is a key distinction.
26 Under the federal system, once the filed tariff is approved, the carrier must charge that tariff
27 and cannot offer rebates to its customers. It logically follows that customers cannot be
28 allowed to effectively obtain rebates through lawsuits seeking damages. But under
California’s system regulating insurance rates, insurers are allowed to rebate excess
premiums to their policyholders. Thus, even if the filed rate doctrine applied in the context

1 of a rate approved by a state regulatory agency (defendants have pointed to no cases in which
2 it was), it nevertheless would have no application here.

3 Id. (internal citations omitted). In this case, Plaintiff seeks to recover only the value of the interest
4 that Defendants gleaned by allegedly inducing him to pay his premium early, he does not seek a
5 rebate or reduction in the premium itself.

6 Accordingly, the Court DENIES Defendants' Motion on the ground that Plaintiff's claims
7 are barred under the California insurance regulatory scheme.

8 **2. Unfair Competition Law Claim**

9 Defendants move for summary judgment as to Plaintiff's California Unfair Competition Law
10 ("UCL") claim on the grounds that (1) Plaintiff could not have relied on the due dates provided in
11 the billing statements because on several occasions he did not abide by them, and (2) Plaintiff did
12 not act as a "reasonable consumer" when he neglected to read the disclosures that were provided
13 with his billing statement. (Defendants' Motion at 16-25.)

14 California's Unfair Competition Law defines unfair competition as any "unlawful, unfair or
15 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal.
16 Bus. & Prof. Code § 17200. "'Fraudulent,' as used in the statute, does not refer to the common law
17 tort of fraud but only requires a showing members of the public 'are likely to be deceived.'" Saunders v. Superior Court, 27 Cal. App. 4th 832, 839 (Cal. Ct. App. 1994) (citing Bank of the West v. Superior Court, 2 Cal. 4th 1254, 1267 (1992)). "This means that a section 17200 violation [can be
18 shown] even if no one was actually deceived, relied upon the fraudulent practice, or sustained any
19 damage." State Farm v. Superior Court of Los Angeles County, 45 Cal. App. 4th 1093, 1105 (Cal.
20 Ct. App. 1996). Unfair business practices claims "must be evaluated from the vantage of a
21 reasonable consumer." Freeman v. Time, Inc., 68 F.3d 285, 289 (9th Cir. 1995).

22 To have standing to bring a § 17200 claim, a plaintiff must have (1) suffered injury-in-fact
23 and (2) lost money as a result of unfair competition. See Cal. Bus. & Prof. Code § 17204. The
24 Court has previously held that the lost of use of money is not materially different from the loss of
25 money. (See Docket Item No. 42.) The California Supreme Court has recently held that the
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1 language of Section 17204 “imposes an actual reliance requirement on plaintiffs prosecuting a
 2 private enforcement action under the UCL’s fraud prong.” In re Tobacco Cases, 46 Cal. 4th 298,
 3 326 (Cal. Ct. App. 2009). However, in showing “that the misrepresentation was an immediate cause
 4 of the injury-producing conduct, plaintiff need not demonstrate it was the only cause It is
 5 enough that the representation has played a substantial part, and so had been a substantial factor, in
 6 influencing his decision.” Id. (internal citation omitted).

7 Further, the California Supreme Court has recognized that “[a] UCL action is equitable in
 8 nature; damages cannot be recovered. . . . [U]nder the UCL, ‘[p]revailing plaintiffs are generally
 9 limited to injunctive relief and restitution.’” In re Tobacco Cases, 46 Cal. 4th at 312 (internal
 10 citations omitted)..

11 **a. Reliance**

12 At issue is whether a misrepresentation or omission in the billing statement was a substantial
 13 factor in Plaintiff’s decision to send in his premium payment thirty days early.

14 Defendants produced, *inter alia*, the following evidence to demonstrate that Plaintiff did not
 15 rely on any misrepresentation or omission in the billing statement: (1) Plaintiff’s deposition
 16 testimony that he had never read documents included with his billing statement which explained his
 17 renewal payment options;⁵ (2) Plaintiff’s deposition testimony that the only portions of his insurance
 18 bill that he actually read were the due date and the amount to pay in full;⁶ and (3) the renewal bill
 19 Plaintiff received for the October 24, 2004 to April 24, 2005 renewal policy period reflecting a
 20 payment due date of September 24, 2004 accompanied by a declaration that Allstate did not receive
 21 the payment for that bill until October 5, 2004.⁷

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 23 ⁵ (Declaration of Gayle M. Athanacio in Support of Allstate Insurance Company and
 24 Allstate Indemnity Company’s Motion for Summary Judgment, hereafter, “Athanacio Decl.,” Ex. A
 at 59:23-61:08, 111:16-112:18, Docket Item No. 208.)

25 ⁶ (Id. at 68:23-69:09, 83:03-14, 83:25-84:07.)

26 ⁷ (Declaration of Carol Mattox in Support of Allstate Insurance Company and Allstate
 27 Indemnity Company’s Motion for Summary Judgment ¶ 8, hereafter, “Mattox Decl.,” Ex. D, Docket
 Item No. 207.)

1 In response, Plaintiff produced, *inter alia*, the following evidence to demonstrate that he did
2 rely on a misrepresentation in the billing statement: (1) Plaintiff's deposition testimony that his
3 practice was to rely solely on the stated due date on his bills to determine when he had to pay his
4 insurance premiums;⁸ (2) Plaintiff's deposition testimony that he believed at the time he paid his
5 renewal premium that "the due date is the due date," and that the due date on the bill reflected when
6 his payment was actually due.⁹

7 Upon review of the evidence, the Court finds that there is a triable issue of fact as to whether
8 the representations in Allstate's billing statements regarding the payment due date were a substantial
9 factor in Plaintiff's decision to submit his payments before they were actually due. While
10 Defendants' evidence that Plaintiff did not read the explanatory materials accompanying the billing
11 statements is uncontradicted, such evidence is relevant to whether Plaintiff acted as a reasonable
12 consumer, not whether he relied on the representations regarding the due date. Plaintiff clearly
13 testified that he did, in fact, rely solely on the due date listed on the billing statement in deciding
14 when to send in his payment, and it is for the trier of fact to decide whether his testimony is credible.

15 Furthermore, Defendant's uncontradicted evidence that Plaintiff did not always abide by the
16 due date listed on his billing statement does not by itself conclusively prove that Plaintiff understood
17 that the due date listed on the billing statement was not the actual due date. Defendants admit that
18 Plaintiff did, in fact, submit his payment for the first renewal bill more than thirty days in advance of
19 the renewal policy effective date. (Defendants' Motion at 17.) There is no requirement under the
20 UCL that Plaintiff rely on the misrepresentation on multiple occasions, or that there is a pattern of
21 reliance. Plaintiff need only prove that he relied on the misrepresentation once. Thus, the Court
22 finds that a reasonable jury could conclude that Plaintiff did rely on the due date listed in the billing
23 statement in deciding to submit his payment before the actual due date.

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26 ⁸ (Deposition of Vlaho Miletak at 47:19-48:10, 82:15-23, Plaintiff's Motion, Ex. T.)

27 ⁹ (Deposition of Vlaho Miletak at 28:3-13, Plaintiff's Motion, Ex. Y.)

1 Accordingly, the Court DENIES Defendants' Motion on the ground that Plaintiff cannot
2 meet the reliance element of his UCL claim.

3 **b. Fraudulent Business Practices**

4 At issue is whether under a reasonable consumer standard, members of the public would
5 likely be deceived by the billing statement due dates.

6 Here, Defendants produce the following evidence that they adequately disclosed to Plaintiff
7 when his renewal payment was actually due: (1) a brochure that was sent to Plaintiff along with his
8 renewal bill that explained the billing change which allowed him to pay his renewal premiums in
9 two installments rather than one lump sum,¹⁰ and (2) Plaintiff's March 2005 renewal bill, which
10 states a due date of March 24, 2005 but also states, "If you choose to pay your policy in full, please
11 make sure we receive \$367.86 by April 24, 2005."¹¹

12 In response, Plaintiff produced a different brochure that purported to be "[a] guide to your
13 new insurance bill," which stated that a section of the bill called "Your Bill at-a-Glance" contained
14 "[a]ll the important details, like Due Date, To Pay in Full amount, and Minimum Amount Due," but
15 did not make clear the significance of the "Due Date." (Plaintiff's Motion, Ex. CC.)

16 The Court finds that the question of whether a reasonable consumer would likely have been
17 deceived by the billing statement and accompanying explanatory materials is most appropriately
18 answered by the trier of fact. A reasonable consumer could certainly look at the "Due Date" on the
19 billing statement and understand it to mean that payment must be made by that day. Reasonable
20 minds could also differ as to whether the explanations of the new renewal payment option provided
21 in the bill itself and the accompanying brochures were adequate to make a typical automobile
22 insurance purchaser aware of when the renewal payment was actually due. Thus, the Court finds
23 that there is a triable issue of fact as to whether Defendants' conduct was fraudulent within the
24 meaning of the UCL.

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27 ¹⁰ (Mattox Decl. ¶ 5, Ex. B.)

28 ¹¹ (Mattox Decl. ¶ 9, Ex. F.)

1 All California Allstate Insurance Company and Allstate Indemnity Company motor
2 vehicle insureds from January 1, 2002 through December 31, 2005 who received Allstate
3 motor vehicle insurance renewal bills indicating a DUE DATE for payment one month
before the date the policy renewed and who paid their full insurance renewal premiums one
month or more before the renewal policy effective date.

4 (Plaintiff's Motion at 9.)

5 Rule 23(a) provides four requirements that must be satisfied for class certification: (1) the
6 class is so numerous that joinder of all members is impracticable; (2) there are questions of law or
7 fact common to the class; (3) the claims or defenses of the representative parties are typical of the
8 claims or defenses of the class; and (4) the representative parties will fairly and adequately protect
9 the interests of the class. Fed. R. Civ. P. 23(a). These requirements are commonly referred to as
10 numerosity, commonality, typicality, and adequacy of representation, respectively. See Hanlon v.
11 Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998) (citing Amchem Prods., Inc. v. Windsor, 521
12 U.S. 591 (1997)).

13 The plaintiffs must also establish that one or more of the grounds for maintaining the suit as
14 a class action are met under Rule 23(b): (1) there is a risk of substantial prejudice from separate
15 actions; (2) declaratory or injunctive relief benefitting the class as a whole would be appropriate; or
16 (3) common questions of law or fact predominate and the class action is superior to other available
17 methods of adjudication. Fed. R. Civ. P. 23(b). In class actions certified under Rule 23(b)(1) or
18 (b)(2), class members do not have mandatory rights to exclude themselves from the judgment by
19 opting out of the class. See Molski v. Gleich, 318 F.3d 937, 947 (9th Cir. 2003). Such mandatory
20 opt out rights automatically attach to Rule 23(b)(3) classes only. Id.; Fed. R. Civ. P. 23(c)(2)(B).

21 Federal Rule of Civil Procedure 23(c) "imposes an independent duty on the district court to
22 determine by order that the requirements of Rule 23(a) are met regardless of the defendant's
23 admissions."¹² Davis v. Hutchins, 321 F.3d 641, 649 (7th Cir. 2003); see also Davis v. Romney, 490
24 F.2d 1360, 1366 (3d Cir. 1974) ("[I]t is not sufficient that plaintiffs make an uncontested motion for
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26 ¹² Federal Rule of Civil Procedure 23(c)(1) states, in relevant part, "As soon as practicable
27 after the commencement of an action brought as a class action, the court shall determine by order
28 whether it is to be so maintained."

1 a class determination. The Rules impose the additional requirement of class determination and
 2 definition on the district judge. Relief cannot be granted to a class before an order has been entered
 3 determining that class treatment is proper.") A formal class certification determination serves the
 4 important function of protecting absent class members whose rights may be affected by the class
 5 certification. Davis, 490 F.3d at 1366; 7B Wright et al., Federal Practice and Procedure § 1785 (3d
 6 ed. 1998). Thus, "[a]llowing certification by default or because the defendant has admitted that the
 7 class exists, with no independent analysis or determination by the district judge, would remove this
 8 important protection." Davis, 321 F.3d at 649.

9 The Court proceeds to consider whether the requirements of Rule 23 are met with regard to
 10 the proposed class.¹³

11 1. Requirements Under Rule 23(a)

12 Plaintiff contends that the proposed class satisfies the numerosity, commonality, typicality,
 13 and adequacy requirements of Rule 23(a). (Plaintiff's Motion at 9.) The Court considers each
 14 requirement in turn.

15 a. Numerosity

16 Defendants do not challenge Plaintiff's showing that the numerosity requirement has been
 17 met.¹⁴ However, the Court undertakes its own analysis of the numerosity element as required under
 18 Rule 23(c).

21 ¹³ Defendants have filed multiple objections to evidence produced by Plaintiff in support of
 22 his Motion for Class Certification. (See Defendants Allstate Insurance Company's and Allstate
 23 Indemnity Company's Objections to Declarations of Jerald Udinsky and Geoffrey Nunberg, Docket
 24 Item No. 220; Defendants' Objections to Declaration of Vlaho Miletak in Support of Plaintiff's
 25 Motion for Class Certification, Docket Item No. 222; Defendants' Objections to Declaration of
 Mark P. Millen in Support of Plaintiff's Motion for Class Certification, Docket Item No. 223.) The
 Court does not rely on any of the documents to which Defendants object, with the exception of the
 Samuel Kornhauser Declaration which is discussed *infra* at note 17, in reaching its decision. Thus,
 the Court OVERRULES Defendants various evidentiary objections as moot.

26 ¹⁴ (See Defendants' Opposition to Plaintiff Miletak's Motion in Support of Order Granting
 27 Class Certification and Appointment of Class Counsel, hereafter, "Defendants' Opposition," Docket
 Item No. 219.)

1 The numerosity requirement of Rule 23(a) is satisfied if the members of the proposed class
2 are “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). To be
3 impracticable, “Rule 23(a)(1) does not mandate that joinder of all parties be impossible – only that
4 the difficulty or inconvenience of joining all members of the class make use of the class action
5 appropriate.” Cen. States Se. and Sw. Areas Health & Welfare Fund v. Merck-Medco Managed
6 Care, L.L.C., 504 F.3d 229, 244-45 (2d Cir. 2007). “The numerosity requirement requires
7 examination of the specific facts of each case and imposes no absolute limitations.” Gen. Tel. Co. v.
8 E.E.O.C., 446 U.S. 318, 330 (1980). “[G]enerally if the named plaintiff demonstrates that the
9 potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.” Stewart v.
10 Abraham, 275 F.3d 220, 227 (3rd Cir. 2001).

11 Here, Plaintiff contends that the proposed Class includes well over 200,000 people. (Motion
12 at 10.) Defendants concede that close to 200,000 people paid their bills more than 30 days before
13 the renewal date.¹⁵ Accordingly, the Court finds that the proposed class satisfies the numerosity
14 requirement.

15 **b. Commonality**

16 Defendants do not challenge Plaintiff’s showing that the numerosity requirement has been
17 met. (See Defendants’ Opposition.) However, the Court undertakes its own analysis of the
18 commonality element as required under Rule 23(c).

19 The commonality requirement is satisfied if there are “questions of law or fact common to
20 the class.” Fed. R. Civ. P. 23(a)(2). The questions of law or fact need not be identical to satisfy
21 Rule 23(a)(2). Rather, “[t]he existence of shared legal issues with divergent factual predicates is
22 sufficient, as is a common core of salient facts coupled with disparate legal remedies within the
23 class.” Staton v. Boeing Co., 327 F.3d 938, 953 (9th Cir. 2003).

24 In this case, all members of the proposed class received Statements displaying the same
25 formatted information, and all of them paid their six-month insurance premiums at least one month

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27 ¹⁵ (Defendant Allstate Indemnity Company’s Responses to Plaintiff’s Interrogatory Set No.
1 at 5, Plaintiff’s Motion, Ex. H.)

1 prior to the actual due date for policy renewal. Whether the Statements were deceiving to a
 2 reasonable consumer is a question of fact common to the proposed class. Similarly, the type and
 3 measure of damages, *i.e.*, the lost interest on early payments, is a common question of law.

4 Thus, the Court finds that the proposed class satisfies the commonality requirement.

5 **c. Typicality**

6 Defendants contend that the typicality requirement is not met because Plaintiff did not read
 7 his policy documents or other notices.¹⁶ (Defendants' Opposition at 13-14.)

8 The typicality requirement is satisfied when "the claims or defenses of the representative
 9 parties are typical of the claims and defenses of the class." Fed. R. Civ. P. 23(a)(3). Claims are
 10 typical if they arise "from the same course of events, and each class member makes similar legal
 11 arguments to prove the defendant's liability." Armstrong v. Davis, 275 F.3d 849, 868 (9th Cir.
 12 2001) (citations omitted). "Representative claims are 'typical' if they are reasonably co-extensive
 13 with those of absent class members; they need not be substantially identical." Hanlon v. Chrysler
 14 Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). "In determining whether typicality is met, the focus
 15 should be 'on the defendants' conduct and plaintiff's legal theory,' not the injury caused to the
 16 plaintiff." Simpson v. Fireman's Fund Ins. Co., 231 F.R.D. 391, 396 (N.D. Cal. 2005) (quoting
 17 Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992)). Nonetheless, the representative parties
 18 must at a minimum "be part of the class and possess the same interest and suffer the same injury as
 19 the [other] class members." Gen. Tel. Co. of the Sw. v. Falcon, 457 U.S. 147, 156 (1982).

20 In this case, Plaintiff alleges injury stemming from early payment of insurance premiums
 21 based on deceptive Statements sent by Defendants between 2002 and 2005. The proposed class
 22 consists of policy holders who also made early payments based on identical Statements sent by

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 24 ¹⁶ Defendants rely on Caro v. Proctor & Gamble Co., 18 Cal. App. 4th 644 (Cal. Ct. App.
 25 1993), for the proposition that a plaintiff who does not read the full text of an allegedly deceptive
 26 statement is not a typical class member. (Defendants' Opposition at 15). However, Caro is
 27 distinguishable. Caro involved orange juice packaging that was allegedly misleading because it
 28 indicated the juice was "fresh." The court found that lead plaintiff's testimony regarding the
 packaging provided substantial evidence that he understood from the advertising that the juice was
 not fresh. Id. In contrast, Plaintiff in this case alleges that he was misled by the Statements and
 understood them to require payments more than thirty days before the due date.

1 Defendants during the same time period. Plaintiff and the other class members were also subjected
2 to the same form of damages; namely, Defendants used the early profits as a “float” for its own
3 economic advantage. (FAC ¶ 41.) Thus, Plaintiff’s claims are coextensive with those of the
4 proposed class because they involve the same legal claim based on the same course of events.

5 The Court finds Defendants’ contention unavailing because the Court applies an objective
6 “reasonable consumer” standard in determining whether Defendants’ billing statements or other
7 materials are fraudulent within the meaning of the UCL. See Freeman v. Time, Inc., 68 F.3d 285,
8 289 (9th Cir. 1995). Furthermore, the Court has found that Plaintiff made a sufficient showing to
9 create a triable issue of fact as to whether he relied on Defendants’ representations regarding the due
10 date, and he thus has standing to assert a claim under the UCL. See supra Part IV.A.2. Plaintiff’s
11 alleged failure to carefully scrutinize the Statements is not relevant to establishing his claim or those
12 of the absent class members. Accordingly, the Court finds that Plaintiff’s claims are typical of the
13 proposed class.

14 d. Adequacy

15 At issue is whether Plaintiff can adequately represent the class.

16 The adequacy requirement is satisfied when “the representative parties will fairly and
17 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Constitutional due process
18 concerns require that absent class members be afforded adequate representation “before entry of a
19 judgment which binds them.” Hanlon, 150 F.3d at 1020 (citing Hansberry v. Lee, 311 U.S. 32, 42-
20 43 (1940)). Thus, a determination of adequacy is based on two inquiries: (1) whether the proposed
21 representative plaintiff has conflicts of interest with the proposed class, and (2) whether plaintiff is
22 represented by qualified and competent counsel. Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1185 (9th
23 Cir. 2007); see Hanlon, 150 F.3d at 1020; see also Molski v. Gleich, 318 F.3d 937, 955 (9th Cir.
24 2003).

25 Here, the Court first addresses Plaintiff’s adequacy as class representative; the Court
26 considers counsel’s adequacy in Part IV(C), supra. In this case, Plaintiff’s interests coincide with
27 the interests of other members of the proposed class because they were allegedly injured in the same
28

1 manner and seek the same relief. Thus, Plaintiff does not have any apparent conflict of interest with
2 the proposed class. Accordingly, the Court finds that Plaintiff satisfies the adequacy requirement.

3 The Court proceeds to consider whether the proposed class meets the requirements of Rule
4 23(b).

5 **2. Requirements Under Rule 23(b)**

6 In addition to the four requirements of Rule 23(a), a class action may only be brought if it
7 satisfies one of the three requirements set forth in Rule 23(b). Here, Plaintiff moves for class
8 certification under Rule 23(b)(3). (Plaintiff's Motion at 19.)

9 Under 23(b)(3), a class action may be maintained when (1) "the court finds that the questions
10 of law or fact common to the class members predominate over any questions affecting only
11 individual members" and (2) "that a class action is superior to other available methods for fairly and
12 efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Relevant to the court's
13 consideration are the following factors: (A) the class members' interests in individually controlling
14 the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning
15 the controversy already begun by or against class members; (C) the desirability of concentrating the
16 litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class
17 action. *Id.* The Court addresses the predominance and superiority factors in turn.

18 **1. Whether Common Questions Predominate**

19 At issue is whether common questions predominate.

20 "[I]mplicit in the satisfaction of the predominance test is the notion that the adjudication of
21 common issues will help achieve judicial economy." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d
22 1227, 1234 (9th Cir. 1996) (quotation omitted). However, the court should "balance these concerns
23 with the greater number of questions affecting individual class members." *In re N. Dist. of Cal.,*
24 *Dalkon Shield*, 693 F.2d 847, 856 (9th Cir. 1982).

25 Here, the common fact in this case is that members of the proposed class received
26 Defendants' standardized Statements from January 1, 2002 through December 31, 2005. The
27 predominant issue is whether these Statements violated California law and unjustly enriched
28

1 Defendants by deceptively inducing class members to pay their premiums at least thirty days before
 2 the actual due date. Since the claims are based on identical statements received during a common
 3 time period and allege a uniform type of harm, common issues predominate.¹⁷

4 **2. Whether a Class Action is the Superior**

5 At issue is whether a class action is the superior method of adjudicating the issues.

6 A class action may be the superior means of litigating the common issues if it “will reduce
 7 litigation costs and promote greater efficiency.” Valentino v. Carter-Wallace, Inc., 97 F.3d at 1234
 8 (citing Dalkon Shield, 693 F.2d at 856). Furthermore, a class action is superior when it is the only
 9 realistic form of adjudication available. Valentino, 97 F.3d at 1234-35.

10 In this case, each member’s claim is likely too small to be worth pursuing in an individual
 11 action. Thus, a class action may be the only method for providing meaningful recovery.
 12 Additionally, in light of the size of the proposed class and the geographic dispersion of the class
 13 members, concentrating the claims into a single action in a single forum is desirable. Such
 14 concentration will prevent disparate outcomes and inconsistent rulings with regard to both class
 15 members and Defendants. The size of the class will not make the lawsuit unmanageable because
 16 Defendants’ computerized records will make it easy to identify and notify class members and
 17 determine the extent of damages, if any, that each has suffered. Finally, Plaintiff represents that no
 18 other class actions are pending that would resolve the issues raised in this case. (Plaintiff’s Motion
 19 at 23.) On the basis of these considerations, the Court finds that a class action is a superior method
 20 for resolving this dispute.

21 In Opposition, Defendants contend that Allstate Indemnity policy holders cannot properly
 22 fall within the class because “Plaintiff has no standing to assert claims against entities with whom
 23

24 ¹⁷ The Court notes that its finding in Part IV.A.2.c that the remedy sought is restitutionary in
 25 nature is not inconsistent with its finding here that common questions predominate. The value of
 26 interest owed to each class member may be determined using a relatively simple mathematical
 27 formula, e.g., multiplying the amount of early premium payments by the length of time Defendants
 28 unlawfully had use of those payments by an average standardized interest rate from the time period
 in question. Thus, determining the remedy owed to each class member will not involve highly
 individualized fact determinations.

1 Plaintiff was never insured and to whom he paid nothing.” (Defendants’ Opposition at 24.) The
 2 Court has already resolved the issue of Plaintiff’s standing to sue Allstate Indemnity in a prior
 3 Order, and Defendants raise no new law or facts here to persuade the Court to reconsider that
 4 Order.¹⁸ Since Plaintiff alleges that Allstate Indemnity and Allstate Insurance acted as joint
 5 venturers, agents of each other and as co-conspirators, Plaintiff may bring suit against Allstate
 6 Indemnity on a theory of joint liability. (Id.) Thus, the Court finds that a class action is the superior
 7 method of adjudicating the issues here.

8 Accordingly, the Court GRANTS Plaintiff’s Motion for Class Certification.¹⁹

9 **C. Lead Counsel**

10 At issue is whether Plaintiff’s counsel can adequately represent the interests of the class.
 11 Defendants contend that Mr. Kornhauser is not adequate because of certain discovery disputes
 12 between the parties. (Defendants’ Opposition at 18 n.7.)

13 When a court certifies a class under Rule 23, the court must also appoint class counsel that
 14 will “fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(4). In
 15 appointing class counsel, the court must consider (1) the work counsel has done regarding the
 16 action; (2) counsel’s experience with class actions and relevant complex litigation; (3) counsel’s
 17 understanding of relevant law; and (4) the resources counsel will commit to representing the class.
 18 Fed. R. Civ. P. 23(g)(1)(A). A court may also consider other factors relevant to counsel’s ability to
 19 fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(1)(B).

20 In this case, Plaintiff’s Counsel, Samuel Kornhauser, has pursued this action since April 28,
 21 2006. Mr. Kornhauser represents that he has been practicing law in California for over thirty years
 22 and has been involved in a number of class actions, including class action cases involving unfair
 23

24 ¹⁸ (Order Granting Allstate Insurance’s Motion to Dismiss with Prejudice; Denying
 25 Defendant Allstate Indemnity’s Motion to Dismiss at 11, Docket Item No. 194.)

26 ¹⁹ On January 19, 2010, Plaintiff filed a Motion for Leave to File Reply Memorandum in
 27 Support of Motion for Class Certification One Day Out of Time. (Docket Item No. 241.) In light of
 28 this Order, the Court DENIES as moot Plaintiff’s Motion for Leave.

1 competition. (Declaration of Samuel Kornhauser ¶¶ 2-4, Plaintiff’s Motion, Ex. W.)²⁰ The Court
 2 finds Defendants’ challenge as to Mr. Kornhauser’s adequacy resulting from the parties’ discovery
 3 disputes unsubstantiated by the record or significant sufficient to question Mr. Kornhauser’s
 4 competency to represent the class. Accordingly, the Court appoints Plaintiff’s Counsel as Class
 5 Counsel.

6 V. CONCLUSION

7 The Court DENIES Defendants’ Motion for Summary Judgment. The Court GRANTS
 8 Plaintiff’s Motion for Class Certification as follows²¹:


- 9 (1) The Class shall consist of “all California Allstate Insurance Company and Allstate
 10 Indemnity Company motor vehicle insureds from January 1, 2002 through December
 11 31, 2005 who received Allstate motor vehicle insurance renewal bills indicating a
 12 DUE DATE for payment one month before the date the policy renewed and who paid
 13 their full motor vehicle insurance premiums one month or more before the renewal
 14 policy effective date.”
- 15 (2) Attorney Samuel Kornhauser shall serve as Class Counsel.

20
 21 ²⁰ Defendants object to the Court’s consideration of Mr. Kornhauser’s declaration on the
 22 ground that it lacks foundation as to the adequacy of Mr. Kornhauser to pursue this action on behalf
 23 of Plaintiff and the class. (Defendants’ Objections to Declaration of Samuel Kornhauser in Support
 24 of Plaintiff’s Motion for Class Certification, hereafter, “Objection to Kornhauser Decl.,” Docket
 25 Item No. 224.) Specifically, Defendants contend that Mr. Kornhauser failed to provide sufficient
 26 details of his prior class action representation experience. (Id. at 2.) The Court finds the level of
 27 detail Mr. Kornhauser provides to be adequate, and Defendants provide no basis on which to doubt
 28 the veracity of Mr. Kornhauser’s representations. Thus, the Court OVERRULES Defendants’
 Objection to the Kornhauser Declaration.

26 ²¹ On February 3, 2010, Plaintiff filed a Request to Submit Supplemental Authorities
 27 Regarding Class Certification/Summary Judgment. (Docket Item No. 243.) Since the Court finds
 28 that Plaintiff prevails on both of the present Motions, the Court DENIES Plaintiff’s Request to
 Supplement as moot.

1 On or before **March 29, 2010**, the parties shall file for the Court's approval a proposed form
2 of class notice and a joint proposal for dissemination of notice.

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4 Dated: March 5, 2010



JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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6

7

Dated: March 5, 2010

Richard W. Wieking, Clerk

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**By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy**

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