

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:24-1810-MWC (DFMx) Date: February 24, 2025

Title Farbod Hadizadeh Moghadam et al. v. Alleviate Tax, LLC

Present: The Honorable: Michelle Williams Court, United States District Judge

T. Jackson
Deputy Clerk

Not Reported
Court Reporter / Recorder

Attorneys Present for Plaintiffs:
N/A

Attorneys Present for Defendants:
N/A

Proceedings (In Chambers): ORDER DENYING DEFENDANT’S MOTION TO DISMISS (DKT. 42) AND MOTION TO STAY (DKT. 44), GRANTING IN PART AND DENYING IN PART THE MOTION TO STRIKE CLASS ALLEGATIONS (DKT. 43), WITH LEAVE TO AMEND; ORDER DEEMING MOOT DEFENDANT’S MOTION TO COMPEL ARBITRATION (DKT. 40); AND MOTION TO SEVER (DKT. 41)

Before the Court are Defendant Alleviate Tax, LLC’s (“Alleviate”) motion to dismiss (Dkt. # 42 (“*MTD*”)), motion to strike (Dkt. # 43 (“*Mot. Strike*”)), and motion to stay (Dkt. # 44 (“*Mot. Stay*”). Plaintiff Farbod Hadizadeh Moghadam (“Moghadam”) opposed the motion to dismiss and motion to strike, but he did not file an opposition to the motion to stay. Dkts. # 54 (“*MTD Opp.*”), 55 (“*Strike Opp.*”). Alleviate replied to the oppositions. Dkts. # 57 (“*MTD Reply*”), 59 (“*Strike Reply*”). The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers, the Court **DENIES** Alleviate’s motion to dismiss and motion to stay discovery, but **GRANTS IN PART AND DENIES IN PART** the motion to strike class allegations **WITH LEAVE TO AMEND**.¹

¹ This action was initially filed by Plaintiffs Moghadam and Nigel Lucombe (“Lucombe”). *See* Dkts. # 1, 39. In bringing the instant motions, Alleviate also filed a motion to compel individual arbitration against Lucombe and a motion to sever/transfer. Dkts. # 40, 41. Lucombe subsequently filed a notice of dismissal as to Alleviate. Dkt. # 52. Accordingly, the Court deems **MOOT** the motion to compel and motion to sever. To address the portion on transfer within the motion to sever, the Court granted the

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I. Background

Plaintiff Moghadam filed this putative class action against Defendant Alleviate on August 16, 2024, Dkt. # 1, and filed a first amended complaint (“FAC”) on December 13, 2024, Dkt. # 39 (“FAC”), asserting that Defendant Alleviate, a for-profit corporation that sells debt consolidation services targeting individuals encumbered with debts owed to the Internal Revenue Service, violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §§ 227—specifically Sections 227(b)(1) and 227(c)(5)—and the California Invasion of Privacy Act (“CIPA”), Cal. Pen. Code § 632. *See FAC*.

According to Moghadam, Alleviate markets its service through unsolicited and prerecorded telemarketing phone calls without prior express written consent. *Id.* ¶ 42. Moghadam asserts that he personally registered his cell phone number on the National Do Not Call Registry (“DNC”), but Alleviate called his cell phone on July 5, 2023, and August 17, 2023. *Id.* ¶¶ 47–55. The July 5, 2023 call was an autodialed call with a prerecorded message that played and directed Moghadam to press a number on the keypad to connect to a representative. *Id.* ¶ 50. Subsequently, from August 17 to September 11, 2023, John Tran, acting on behalf of Alleviate, made eight additional calls and sent nine solicitation text messages promoting Alleviate’s program. *Id.* ¶¶ 60–62. Moghadam did not provide Alleviate his cellular telephone number at any point in time. *Id.* ¶ 63. Unbeknownst to Moghadam, Alleviate recorded and saved the phone calls without his prior express consent. *Id.* ¶¶ 54, 59, 67.

The proposed classes are defined as:

Prerecorded Voice Class: All persons within the United States (1) whom received any telephone call/s from Defendants, its employees and/or agents, (2) for the purpose promoting Defendants’ goods or services, (3) to said person’s cellular telephone (4) made through the use of an artificial or prerecorded voice and (5) without prior express consent in writing from said person to receive such calls (6) within the four years prior to the filing of this action.

parties’ joint stipulation to file a renewed motion to transfer as to Moghadam. Dkt. # 61. The motion to transfer will be addressed on March 28, 2025. *Id.*

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DNC Class: All persons within the United States who received two phone calls within a 12-month period from Defendant to said person’s telephone, and such person had previously included their name on the National Do Not Call Registry at least 31 days prior to receiving Defendant first call, within the four years prior to the filing of this Complaint.

Id. ¶ 133.

II. Motion to Dismiss

To survive a Rule 12(b)(6) motion, a complaint must “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in the light most favorable to the plaintiff. *See Turner v. City & Cnty. of S.F.*, 788 F.3d 1206, 1210 (9th Cir. 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The court then determines whether the complaint “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. However, a cause of action’s elements that are “supported by mere conclusory statements, do not suffice.” *Id.* Accordingly, “for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

Alleviate moves to dismiss Moghadam’s CIPA claim—arguing that Moghadam cannot allege a claim because he is not protected by CIPA as a non-California resident. *MTD* 5:15–7:24. In opposition, Moghadam contends that CIPA does indeed protect him. *MTD Opp.* 4:5–7:12. The Court agrees with Moghadam.

Alleviate relies on *Kearney v. Salomon Smith Barney, Inc.* for the proposition that CIPA’s legislative purpose is “to protect the right of privacy of the people of this state.” 39 Cal. 4th 95, 119–20 (2006) (quoting note that Cal. Penal Code § 630). Notably, *Kearney* did not address the question at hand: whether a California defendant could be liable to non-California plaintiffs under the statute. *See Valentine v. NebuAd, Inc.*, 804 F. Supp. 2d 1022, 1027 (N.D. Cal. 2011). CIPA does not definitively limit liability of California plaintiffs. *See, e.g.*, Cal. Penal Code § 637.2 (“Any person who has been

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injured by a violation of [CIPA] may bring an action against the person who committed the violation[.]” (emphasis added). “California recognizes that ‘with respect to regulating or affecting conduct within its borders, the place of the wrong has the predominant interest.’” *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 593 (9th Cir. 2012) (internal citations omitted), *overruled on other grounds by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022). Indeed, “[a] legislative purpose that articulates an interest in protecting those within California is not inconsistent with also allowing non-Californians to pursue claims against California residents,” and to hold otherwise “would mean the California Legislature intended to allow California residents to violate the CIPA and the CCCL with impunity with respect to out-of-state individuals and entities.” *Valentine*, 804 F. Supp. 2d at 1028.

Alleviate acknowledges that courts have broadened the scope of CIPA to allow non-California residents to assert claims under the statute but that the alleged violation must have occurred within California. *Reply* 3:16–4:3; *see Valentine*, 804 F. Supp. 2d at 1026 (holding that plaintiffs were permitted to maintain their CIPA claims “because the relevant conduct occurred in California”); *Carrese v. Yes Online Inc.*, No. CV 16-05301 SJO (AFMx), 2016 WL 6069198, at *5 (C.D. Cal. Oct. 13, 2016) (holding plaintiff, who was a Florida resident “ha[ve] statutory standing to bring her CIPA claims to the extent the relevant conduct (the alleged recordings) took place in California”) (emphasis added)). Here, the operative complaint identifies Alleviate as a company formed under California, with its principal place and address in California, that conducts business in California. *FAC* ¶¶ 16–18. Additionally, Moghadam asserts that Alleviate’s representatives called to promote its program—indeed, the number John Tran called Moghadam’s cell phone from includes a 949 area code, located in Orange County, California. *Id.* ¶¶ 44–67; *see Eliman v. Law Office of Weltman*, No. 12-cv-01599-DMG (FMOx), 2013 WL 12119720, at *4 (C.D. Cal. Jan. 2, 2013) (taking judicial notice that the area code 310 includes the West Los Angeles area). The Court infers that the unconsented recording took place in California. *See Fabricant v. Fast Advance Funding, LLC*, No. 2:17-cv-05753-AB (JCx), 2018 WL 6920667, at *3 (C.D. Cal. Apr. 26, 2018) (in a TCPA case, finding plaintiff sufficiently alleged personal jurisdiction where defendant made unsolicited phone calls to plaintiff’s cell phone that had a California area code).

Accordingly, the Court **DENIES** Alleviate’s motion to dismiss.

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III. Motion to Strike Class Allegations

Rule 12(f) authorizes a court to “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). A Rule 12(f) motion helps avoid wasting “time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). A motion to strike is generally disfavored and should only be granted if “the matter to be stricken clearly could have no possible bearing on the subject of the litigation,” but if “there is any doubt whether the portion to be stricken might bear on an issue in the litigation, the court should deny the motion.” *Holmes v. Elec. Document Processing, Inc.*, 966 F. Supp. 2d 925, 930 (N.D. Cal. 2013) (citation omitted). “Ultimately, whether to grant a motion to strike lies within the sound discretion of the district court.” *Cruz v. Bank of N.Y. Mellon*, No. 12–CV–00846–LHK, 2012 WL 2838957, at *2 (N.D. Cal. Jul. 10, 2012) (citing *Whittlestone, Inc.*, 618 F.3d at 973).

“A decision to grant a motion to strike class allegations . . . is the functional equivalent of denying a motion to certify a case as a class action.” *Bates v. Bankers Life & Casualty Co.*, 848 F.3d 1236, 1238 (9th Cir. 2017). Striking class allegations prior to a formal certification motion is generally disfavored because the factual record is usually undeveloped. *See Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220, 1245 (C.D. Cal. 2011) (stating “it is in fact rare to [strike class allegations] in advance of a motion for class certification,” and holding “it is premature to determine if this matter should proceed as a class action” because discovery has not begun); *Meyer v. Nat’l Tenant Network, Inc.*, 10 F. Supp. 3d 1096, 1104 (N.D. Cal. 2014) (declining to consider the adequacy of class allegations on a motion to strike); *Yastrab v. Apple Inc.*, No. 5:14-cv-01974-EJD, 2015 WL 1307163, at *8 (N.D. Cal. Mar. 23, 2015) (“[I]n general, class allegations are not tested at the pleading stage and are instead scrutinized after a party has filed a motion for class certification.”). “However, as the Supreme Court has explained, ‘[s]ometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff’s claim.’” *Keen v. Coral Reef Prods., Inc.*, No. SACV 14-814 JVS (JCGx), 2015 WL 12910696, at *2 (C.D. Cal. 2015) (citation omitted). A court, therefore, may strike class allegations when no class action can possibly be maintained on the face of the pleading. *See Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010). “As with motions to dismiss, when ruling on a motion to strike, the Court takes the plaintiffs allegations as

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true and must liberally construe the complaint in the light most favorable to the plaintiff.”
Id.

A. Prerecorded Voice Class

Alleviate moves to strike the Prerecorded Voice Class on the basis that it is pleaded on an individualized merits-based inquiry and not objective criteria. *Mot. Strike* 12:21–16:2. Framed differently, Alleviate essentially argues that the class is a “fail-safe” class. A fail-safe class is “when the class itself is defined in a way that precludes membership unless the liability of the defendant is established.” *Kamar v. RadioShack Corp.*, 375 F. App’x 734, 736 (9th Cir. 2010). “When the class is so defined, once it is determined that a person, who is a possible class member, cannot prevail against the defendant, that member drops out of the class. That is palpably unfair to the defendant, and is also unmanageable—for example, to whom should the class notice be sent?” *Id.*; see also *Genenbacher v. CenturyTel Fiber Co. II*, 244 F.R.D. 485, 488 (C.D. Ill. 2007) (finding it impermissible to define a class in such a way that “the class members either win or are not in the class” so that “the Court cannot enter an adverse judgment against the class”). “Because the TCPA prohibits calls to cellular telephones using ATDSs unless prior express consent has been given, defining the class to include anyone who received such a call without prior express consent means that only those potential members who would prevail on this liability issue would be members of the class.” *Olney v. Job.com, Inc.*, No. 1:12-CV-01724-LJO, 2013 WL 5476813, at *11 (E.D. Cal. Sept. 30, 2013); see *Taylor v. Universal Auto Group I, Inc.*, No. 3:13-cv-05245-KLS, 2014 WL 6654270, at *22 (W.D. Wash. Nov. 24, 2014) (finding that the “inclusion of the ‘without prior consent’ language in the national classes definition makes it [an improper] class, as clearly the issue of consent is central to determining defendant’s liability”). The Ninth Circuit, however, does not necessarily require denying certification simply because the initially proposed class is a fail-safe class. *In re AutoZone, Inc., Wage & Hour Employment Practices Litig.*, 289 F.R.D. 526, 546 (N.D. Cal. 2012). Nevertheless, the Court will provide Moghadam with leave to amend to redefine the Prerecorded Voice Class to avoid any fail-safe problems. *Olney*, 2013 WL 5476813, at *11 (finding that membership in a class was readily determinable by objective criteria after plaintiff removed any language in the class definition that could even arguably cause a fail-safe problem). Accordingly, the Court **GRANTS WITHOUT PREJUDICE** Alleviate’s motion to strike the Prerecorded Voice Class.

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B. DNC Class

Alleviate also moves to strike the DNC class on the basis that it is uncertifiable because it is overly broad and lacks commonality. *Mot. Strike* 16:3–23:4. Specifically, Alleviate argues that the DNC class is overly broad because (1) it fails to exclude calls made with consent and individuals with an established business relationship, and (2) it is not limited to residential numbers. *Id.* 17:15–21:20. As to commonality, Alleviate contends that the class definition fails to account for class members that lack valid claims, and there is no conceivable method to prove the validity of all class member claims in one stroke. *Id.* 21:21-23:4. Those arguments are unavailing.

For one, the Court will not grant a motion to strike based on speculation that some proposed class members may have given their express consent or may personally have an established business relationship. *See Ott v. Mortg. Inv’rs Corp. of Ohio, Inc.*, 65 F. Supp. 3d 1046, 1065, 1067 (D. Or. 2014) (“Since the face of the [] Complaint does not reveal that [defendant] had express consent before it called cell phones, [defendant]’s speculation that some members of the Cell Phone Class may have given their express consent is not sufficient to strike that class action allegation for lack of standing This is not a matter that can be resolved from the face of the [] Complaint and, thus, is not a basis for striking those class allegations.”); *Robert Mason v. Spring EQ LLC*, 5:24-cv-01833-MWC-AGR, Dkt. # 40, at 4 (C.D. Cal. Jan. 22, 2025) (denying a motion to strike where defendant contended that the “class is overly broad for two reasons: (1) the class definition fails to exclude messages sent to individuals who had provided express consent or had an established business relationship with Defendant, and (2) the definition is not limited to individuals who ‘personally placed’ their phone number on the Do-Not-Call Registry”). Moreover, while Alleviate is correct that prior consent or an established business relationship means there is no violation of the TCPA, it cannot have it both ways. *See Olney*, 2013 WL 5476813, at *11. That is, Alleviate cannot have the benefit of striking the consent language in the Prerecorded Voice Class and then argue that it is also impermissible for Moghadam to not exclude individuals who have consented or had an established business relationship with Alleviate. *See id.*

As to the request to limit the class to residential numbers, the Court finds that the class definition is presumptively limited to residential numbers because it requires class members to be listed on the DNC. *See, e.g.*, 47 U.S.C. § 227 (c)(1) (protecting the privacy rights of residential telephone subscribers by providing for the creation of the DNC); *Hall v. Smosh Dot Com, Inc.*, 72 F.4th 983, 989 (9th Cir. 2023) (“The National

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Do-Not-Call Registry is directed at preserving the privacy of the residential subscriber who listed their number with the expectation that they would not be contacted by telemarketers.”); *Chennette v. Porch.com, Inc.*, 50 F.4th 1217, 1225 (9th Cir. 2022) (“The complaint alleges that some of the plaintiffs have placed their ‘residential’ cell phone numbers on the national do-not-call registry. At the motion to dismiss stage and based on the particular allegations in the plaintiffs’ complaint, plaintiffs’ phones are presumptively residential for purposes of § 227(c).”); *see also Laccinole v. Appriss, Inc.*, 453 F. Supp. 3d 499, 505 (D.R.I. 2020) (“Laccinole alleges that Appriss called his cellular telephone, which uses a number registered with the national do-not-call list. This creates the presumption that he is a ‘residential subscriber’ for purposes of the TCPA’s do-not-call protections.” (internal citations omitted)). Therefore, the Court cannot conclude that the class is not certifiable as a matter of law from the face of the pleadings and therefore any remaining issues are better suited for a determination at the class certification stage. *See Lyons v. Coxcom, Inc.*, 718 F. Supp. 2d 1232, 1236 (S.D. Cal. 2009). Accordingly, the Court **DENIES** Alleviate’s motion to strike the DNC Class.

IV. Motion to Stay Discovery

Rule 26(c)(1) gives courts broad discretion in controlling discovery, for good cause, “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) (“The district court has wide discretion in controlling discovery. Such rulings will not be overturned unless there is a clear abuse of discretion.”). The Ninth Circuit has held that district courts do not abuse their discretion by staying discovery and the filing of motions until they have ruled on the pending dispositive motions. *See e.g., Hunt v. Cnty. of Orange*, 672 F.3d 606, 616 (9th Cir. 2012) (holding that the district court has “broad discretion to manage discovery and to control the course of litigation” (internal quotation marks omitted)); *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (holding that the district court may stay discovery if there is a question about whether the plaintiff can state a claim for relief). However, “the Federal Rules of Civil Procedure does not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending.” *Mlejnecky v. Olympus Imaging Am. Inc.*, No. 2:10-cv-02630 JAM KJN, 2011 WL 489743, at *6 (E.D. Cal. Feb. 7, 2011). Indeed, “[h]ad the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. P. 12(b)(6) would stay discovery, the Rules would contain a provision for that effect.” *Skellerup Indus. Ltd. v.*

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City of Los Angeles, 163 F.R.D. 598, 600–01 (C.D. Cal. 1995). The Court finds that the same applies to a motion to strike.

District courts in the Ninth Circuit often apply a two-pronged test to decide whether to stay discovery. *Mlejnecky*, 2011 WL 4889743, at *6; *Seven Springs Ltd. P’ship v. Fox Capital Mgmt. Corp.*, No. S-07-0142 LKK GGH, 2007 WL 1146607, at *1 (E.D. Cal. 2007). The first prong requires that the pending motion “be potentially dispositive of the entire case, or at least dispositive on the issue at which discovery is aimed.” *Id.* The second prong requires the court to “determine whether the pending, potentially dispositive motion can be decided absent additional discovery.” *Id.* If either prong is not met, discovery should proceed. *Id.*

Here, the Court looks no further than the first prong as there are no pending motions that can dispose of the entire case (or even part of it). Although the Court already denied Alleviate’s motion to dismiss, it highlights that Alleviate only moved to dismiss the CIPA claim, not the TCPA claims. *See MTD*. To the extent the Court granted Alleviate’s motion to strike the Prerecorded Voice Class, the Court is not convinced that Moghadam’s potential amendment to the class allegation will be futile. *See Seven Springs*, 2007 WL 1146607, at *2 (requiring the party seeking a stay of discovery to show “by [a] clear and convincing [showing], that it will prevail on the merits of its dispositive motion”). Accordingly, the Court **DENIES** Alleviate’s motion to stay discovery.

V. Conclusion

For the reasons set forth above, the Court **DENIES** Alleviate’s motion to dismiss and motion to stay discovery, but **GRANTS IN PART AND DENIES IN PART** the motion to strike class allegations **WITH LEAVE TO AMEND**. Plaintiff Moghadam must file any amended complaint no later than **March 7, 2025**. Failure to file an amended complaint by that date will result in striking the Prerecorded Voice Class with prejudice.

IT IS SO ORDERED.

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Initials of Preparer TJ
