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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLIE GADOMSKI, individually and on behalf of all others similarly situated,

Plaintiff,

v.

EQUIFAX INFORMATION SERVICES, LLC,

Defendant.

No. 2:17-cv-00670-TLN-AC

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT’S PARTIAL MOTION TO DISMISS AND STRIKE PLAINTIFF’S CLASS ALLEGATIONS

This matter is before the Court pursuant to Defendant Equifax Information Services, LLC’s (“Defendant”) Partial Motion to Dismiss and Strike Plaintiff’s Class Allegations. (ECF No. 17.) Plaintiff Kellie Gadomski (“Plaintiff”) opposes the motion. (ECF No. 20.) After carefully considering the parties’ briefing, the Court hereby GRANTS IN PART AND DENIES IN PART Defendant’s Partial Motion to Dismiss and Strike Plaintiff’s Class Allegations. (ECF No. 17.)

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1 Around December 15, 2016, Defendant notified Plaintiff of the results of the reinvestigation.
2 (ECF No. 1 ¶ 138.) After Defendant’s reinvestigation of Plaintiff’s dispute, it continued to list
3 Plaintiff’s current pay status as “charged off,” as opposed to discharged in Plaintiff’s Bankruptcy.
4 (ECF No. 1 ¶ 141.) Plaintiff alleges that in her case and those similarly situated, Defendant failed
5 to list bankruptcy in the public records section of their credit reports even though Defendant
6 utilizes the computerized court reporting service known as PACER to regularly obtain access to
7 every discharge order issued by a U.S. Bankruptcy Court in Chapter 7 proceedings. (ECF No. 1
8 ¶ 125.) Plaintiff alleges that “were [Defendant] to employ procedures of which it is fully aware,
9 [Defendant] could achieve close to 100 percent accuracy in the reporting of the status of pre-
10 bankruptcy debts.” (ECF No. 1 ¶ 126.)

11 Plaintiff alleges that Defendant willfully and negligently failed to follow reasonable
12 procedures to assure maximum possible accuracy of credit information in violation of 15 U.S.C.
13 1681e(b) and Defendant willfully and negligently failed to conduct a reasonable reinvestigation to
14 assure maximum possible accuracy of credit reports in violation of 15 U.S.C. § 1681i(a). (ECF
15 No. 1 ¶¶ 172–196.) Consequently, Plaintiff alleges Defendant violated both her and Class
16 Members’ statutory rights to be able to apply for credit based on accurate information. (ECF No.
17 1 ¶¶ 178, 183, 194.) Specifically, Plaintiff alleges that as a result of Defendant’s inaccurate
18 reporting and unreasonable reinvestigation procedures, she and Class Members are at increased
19 risk of not being able to obtain valuable credit and their creditworthiness has been adversely
20 affected. (ECF No. 1 ¶¶ 178, 183, 189, 196.)

21 Plaintiff seeks to represent a purported nationwide class of consumers and two purported
22 nationwide subclasses. (ECF No. 1 ¶¶ 153, 160, 166.) The purported class includes all Chapter 7
23 and Chapter 13 debtors whose Defendant’s consumer reports included “one or more...tradeline
24 accounts or debts [which were] not reported as discharged.” (ECF No. 1 ¶ 153.) The alleged
25 “Dispute Subclass” includes the same debtors whose allegedly discharged debts “continued to be
26 erroneously reported by [Defendant]” after they disputed those debts. (ECF No. 1 ¶ 160.)
27 Finally, the alleged “Public Record Subclass” includes debtors “whose record of Chapter 7 and
28 Chapter 13 Bankruptcies fail to report in the ‘Public Records’ section of [Defendant’s] credit

1 reports any time.” (ECF No. 1 ¶ 166.)

2 **II. STANDARD OF LAW**

3 A. Motion to Dismiss Pursuant to 12(b)(6)

4 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
5 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Federal Rule of
6 Civil Procedure 8(a) requires that a pleading contain “a short and plain statement of the claim
7 showing that the pleader is entitled to relief.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79
8 (2009). Under notice pleading in federal court, the complaint must “give the defendant fair notice
9 of what the claim . . . is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S.
10 544, 555 (2007) (internal quotation omitted). “This simplified notice pleading standard relies on
11 liberal discovery rules and summary judgment motions to define disputed facts and issues and to
12 dispose of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

13 On a motion to dismiss, the factual allegations of the complaint must be accepted as true.
14 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give plaintiff the benefit of every
15 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail*
16 *Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege
17 “ ‘specific facts’ beyond those necessary to state his claim and the grounds showing entitlement
18 to relief.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads
19 factual content that allows the court to draw the reasonable inference that the defendant is liable
20 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. 544, 556 (2007)).

21 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of
22 factual allegations.” *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir.
23 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than an
24 unadorned, the defendant–unlawfully–harmed–me accusation.” *Iqbal*, 556 U.S. at 678. A
25 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the
26 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678
27 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
28 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove

1 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not
2 been alleged[.]” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*,
3 459 U.S. 519, 526 (1983).

4 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough
5 facts to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 697 (quoting
6 *Twombly*, 550 U.S. at 570). Only where a plaintiff has failed to “nudge[] [his or her] claims . . .
7 across the line from conceivable to plausible[.]” is the complaint properly dismissed. *Id.* at 680.
8 While the plausibility requirement is not akin to a probability requirement, it demands more than
9 “a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This plausibility inquiry is
10 “a context–specific task that requires the reviewing court to draw on its judicial experience and
11 common sense.” *Id.* at 679.

12 If a complaint fails to state a plausible claim, “ ‘[a] district court should grant leave to
13 amend even if no request to amend the pleading was made, unless it determines that the pleading
14 could not possibly be cured by the allegation of other facts.’ ” *Lopez v. Smith*, 203 F.3d 1122,
15 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 484, 497 (9th Cir. 1995));
16 see also *Gardner v. Marino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of discretion in
17 denying leave to amend when amendment would be futile). Although a district court should
18 freely give leave to amend when justice so requires under Rule 15(a) (2), “the court’s discretion
19 to deny such leave is ‘particularly broad’ where the plaintiff has previously amended its
20 complaint[.]” *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir.
21 2013) (quoting *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004)).

22 B. Motion to Dismiss Pursuant to 12(f)

23 The Court “may strike from a pleading an insufficient defense or any redundant,
24 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “As with motions to
25 dismiss, when ruling on a motion to strike, the Court takes the plaintiff’s allegations as true[.]”
26 *Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010). Similarly, the Court “must
27 view the pleading in the light most favorable to the nonmoving party.” *Cholakyan v.*
28 *MercedesBenz USA, LLC*, 796 F. Supp. 2d 1220, 1245 (C.D. Cal. 2011). “Motions to strike are

1 generally disfavored because they are often used as delaying tactics and because of the limited
2 importance of pleadings in federal practice.” *Shaterian v. Wells Fargo Bank, N.A.*, 829 F. Supp.
3 2d 873, 879 (N.D. Cal. 2011) (internal quotation omitted). “If there is any doubt whether the
4 portion to be stricken might bear on an issue in the litigation, the court should deny the motion.”
5 *Holmes v. Elec. Document Processing, Inc.*, 966 F. Supp. 2d 925, 930 (N.D. Cal. 2013).

6 Courts have recognized that class action allegations may sometimes be properly stricken
7 at the pleading stage. *See e.g., Kamm v. California City Dev. Co.*, 509 F.2d 205, 209–213 (9th
8 Cir. 1975); *see generally General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160
9 (1982) (“Sometimes the issues are plain enough from the pleadings to determine whether the
10 interests of absent parties are fairly encompassed within the named plaintiff’s claim.”). However,
11 Ninth Circuit precedent stands “for the unremarkable proposition that often the pleadings alone
12 will not resolve the question of class certification and that some discovery will be warranted.”
13 *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 942 (9th Cir. 2009). District courts have
14 broad discretion to control the class certification process, including whether to permit discovery
15 in connection with class certification. *See id.*

16 III. ANALYSIS

17 Plaintiff’s Complaint alleges four separate causes of action against Defendant: (1) alleged
18 willful violation of 15 U.S.C. § 1681e(b) on behalf of Plaintiff and class members; (2) alleged
19 negligent violation of § 1681e(b) on behalf of Plaintiff and subclass members; (3) alleged willful
20 violation of § 1681i(a) on behalf of Plaintiff and subclass members; and (4) alleged negligent
21 violation of § 1681i(a) on behalf of Plaintiff and subclass members. (ECF No. 1 ¶¶ 172–196.)³
22 Defendant argues this Court should dismiss Plaintiff’s claims for willful and negligent violations
23 of § 1681e(b) (Counts I and II), and Plaintiff’s claim for a negligent violation of §1681i(a) (Count
24 IV). Defendant also argues this Court should dismiss Plaintiff’s requests for equitable relief, and
25 request for statutory and punitive damages for a negligent violation of § 1681i(a). Lastly,
26 Defendant argues this Court should strike Plaintiff’s class allegations. (*See generally* ECF No.

27
28 ³ Plaintiff seeks to represent two purported nationwide subclasses. (ECF No. 1 ¶¶ 160, 166.) However, it is unclear which subclass Plaintiff seeks to represent in Counts II–IV. (ECF No. 1 ¶¶ 179–196.)

1 17.) Defendant is not moving to dismiss Plaintiff’s individual claim that Defendant allegedly
2 willfully violated § 1681i(a) (Count III) so the Court will not discuss this claim. (ECF No. 17 at
3 10 n.1.) The Court will analyze Defendant’s arguments as stated above in chronological order.

4 A. Claims 1 & 2: Willful and Negligent Violations of § 1681e(b)

5 Defendant makes several arguments as to why Plaintiff cannot prevail on her willful and
6 negligent claims under § 1681e(b). (ECF No. 17 at 15–19.) Plaintiff only addressed one of
7 Defendant’s arguments. (*See generally* ECF No. 20.) The Court need only address the single
8 argument Plaintiff responded to in order to conclude that Plaintiff’s claims for willful and
9 negligent violations of § 1681e(b) should be dismissed. *Landis v. North American Co.*, 299 U.S.
10 248, 254 (1936) (determining that courts have inherent power to control the disposition of the
11 causes on its docket for the sake of judicial economy).

12 Defendant argues Plaintiff fails to plausibly allege that Defendant lacks reasonable
13 procedures to assure maximum possible accuracy in consumer reports. (ECF No. 17 at 15–17.)
14 Specifically, Defendant argues that “Plaintiff cannot plausibly contend, on the one hand, that
15 [Defendant] lacks ‘reasonable procedures’ for collecting bankruptcy information while admitting,
16 on the other hand, that [Defendant] already implements the ‘procedure’ Plaintiff (wrongly) argues
17 that the FCRA requires.” (ECF No. 17 at 17.) Further, Defendant argues that the FCRA “does
18 *not* require CRAs to be 100% accurate 100% of the time” and federal district courts have found
19 that the FCRA does not require CRAs to “review every bankruptcy dismissal” prior to preparing a
20 credit report. (ECF No. 17 at 15, 18 (emphasis retained) (quoting *Childress v. Experian Info.*
21 *Sols., Inc.*, 790 F.3d 745, 747 (7th Cir. 2015)).)

22 Plaintiff does not dispute that CRAs are not required to review every bankruptcy
23 dismissal prior to preparing a credit report, that Defendant does not need to be 100% accurate, or
24 that Defendant already regularly obtains information on bankruptcies from PACER. (*See* ECF
25 No. 20 at 9–12.) Instead, Plaintiff argues that she “is *not* required to allege that Defendant lacks
26 reasonable procedures to establish a prima facie case against Defendant.” (ECF No. 20 at 10–11
27 (emphasis retained).) Plaintiff argues that she “is only required to show that Defendant prepared
28 a credit report containing inaccurate information.” (ECF No. 20 at 11.)

1 “[T]o make a prima facie violation under § 1681e(b), a consumer must present evidence
2 tending to show that a credit reporting agency prepared a report containing inaccurate
3 information.” *Guimond v. Trans Union Credit Information Co.*, 45 F.3d 1329, 1333 (9th Cir.
4 1995). “The FCRA does not impose strict liability, however – an agency can escape liability if it
5 establishes that an inaccurate report was generated despite the agency’s following reasonable
6 procedures. The reasonableness of the procedures and whether the agency followed them will be
7 jury questions in the overwhelming majority of cases.” *Id.* “[A] credit reporting agency is not
8 liable under the FCRA for reporting inaccurate information obtained from a [presumptively
9 reliable source], absent prior notice...that the information may be inaccurate.” *Wright v.*
10 *Experian Info. Sols., Inc.*, 805 F.3d 1232, 1241 (10th Cir. 2015) (quotation omitted); *See Jianqing*
11 *Wu v. Trans Union*, Civil Action No. AW-03-1290, 2006 WL 4729755, at *7 (D. Md. May 2,
12 2006) (expressing that it would be economically challenging for CRAs to function if CRAs were
13 liable under the FCRA for relying on business records the CRA identified as trustworthy).

14 Here, Defendant does not dispute that the information reported on Plaintiff’s credit report
15 was inaccurate. (*See* ECF No. 17 at 15.) However, even taking Plaintiff’s allegations as true that
16 her consumer report was inaccurate, Defendant “is not liable under the FCRA for reporting
17 inaccurate information [it] obtained from [Wells Fargo, a presumptively reliable source], absent
18 prior notice...that the information may be inaccurate.” *Wright, Inc.*, 805 F.3d at 1241. Nowhere
19 in Plaintiff’s complaint has Plaintiff alleged Wells Fargo is an unreliable source or that Defendant
20 received notice that the information it obtained from Wells Fargo was inaccurate prior to issuing
21 Plaintiff’s credit report dated November 13, 2016. (*See generally* ECF No. 1.) Rather, Plaintiff
22 alleges that Defendant failed to report Plaintiff’s bankruptcy in the “Public Records” section of
23 her credit report following its reinvestigation into her Wells Fargo account and that her
24 “continued efforts” to correct Defendant’s erroneous and negative reporting of her debt were
25 fruitless. (ECF No. 1 ¶¶ 141, 149.) Plaintiff then makes the conclusory allegation that
26 “[Defendant’s] failure to correct the *previously disclosed inaccuracies* on Plaintiff’s credit report
27 was intentional and in reckless disregard of its duty to refrain from reporting inaccurate
28 information.” (ECF No. 1 ¶ 151 (emphasis added).) Plaintiff’s complaint does not describe how

1 or when the inaccuracies were “previously disclosed,” or even what those disclosures entailed.
2 The Court need not accept vague and conclusory statements as true. Accordingly, Plaintiff fails
3 to adequately allege violations of § 1681e(b).

4 Despite Plaintiff’s vague and conclusory statements (ECF No. 1 ¶¶ 149, 151) and
5 concession that Defendant uses FCRA-compliant procedures (ECF No. 20 at 9; ECF No. 1 ¶ 125–
6 126), the Court finds that Plaintiff may be able to flesh out her claims for violations of § 1681e(b)
7 with greater detail. Thus, for the reasons stated, the Court grants with leave to amend
8 Defendant’s Motion to Dismiss Counts I and II. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
9 2000) (expressing that a district court should liberally grant leave to amend unless amendment
10 would be futile).

11 **B. Claim 4: Negligent Violation of § 1681i(a)**

12 Defendant argues that the Court should dismiss Plaintiff’s claim for negligent violations
13 of 15 U.S.C. § 1681i(a) because Plaintiff does not allege actual damages to support this claim.⁴
14 (ECF No. 17 at 19.) Plaintiff failed to respond to this argument. (*See generally* ECF No. 20.)

15 To bring a negligence claim under the FCRA, Plaintiff must plead and prove that
16 Defendant’s alleged FCRA violation caused her to suffer actual damages. 15 U.S.C. § 1681o(a).
17 Plaintiff alleges she “incurred monetary expenses, time, and effort in an attempt to dispute and
18 seek correction of the inaccuracies” in Defendant’s report and she generally asserts that
19 Defendant’s “reporting damaged [her] creditworthiness.” (ECF No. 1 ¶¶ 124, 128, 130, 152.)
20 Many district courts have held that a plaintiff cannot recover damages for an impaired credit score
21 alone. *See, e.g., Basconcello v. Experian Info. Sols., Inc.*, No. 16-CV- 06307-PJH, 2017
22 WL1046969, at *10–11 (N.D. Cal. Mar. 20, 2017); *King v. Bank of Am., N.A.*, No. C-12- 04168
23 JCS, 2012 WL 4685993, at *6 (N.D. Cal. Oct. 1, 2012). Furthermore, while the Ninth Circuit has
24 not taken a stance on whether out-of-pocket expenses incurred in the ordinary course of disputing
25 inaccuracies in a consumer credit report constitute actionable damage, courts in this circuit have
26 adopted this view from the Second Circuit. The Second Circuit has held that “expenses incurred

27 ⁴ Defendant also made the argument that Plaintiff failed to allege actual damages for Count II. While the
28 Court did not analyze this argument, the Court’s finding as to Count IV would similarly apply to an argument that
Plaintiff did not adequately plead actual damages as to Count II.

1 merely to notify [CRAs] of inaccurate credit information, and not to force their compliance with
2 any specific provision of the statute, cannot be compensable as ‘actual damages’ for a violation of
3 the FCRA.” *Basconcello*, 2017 WL1046969, at *11 (quoting *Casella v. Equifax Credit*
4 *Information Services*, 56 F.3d 469, 474 (2d Cir. 1995)). The Court finds this analysis persuasive.
5 Thus, neither of Plaintiff’s alleged damages are sufficient to show actual damages. Therefore,
6 the Court grants with leave to amend Defendant’s Motion to Dismiss Plaintiff’s claim for a
7 negligent violation of § 1681i(a). *Lopez v. Smith*, 203 F.3d 1122, 1127.

8 C. Plaintiff’s Request for Equitable Relief & Statutory and Punitive Damages for
9 Negligent Violation of § 1681i(a)

10 i. *Equitable Relief under the FCRA*

11 Defendant argues that the FCRA does not permit Plaintiff to obtain equitable relief. (ECF
12 No. 17 at 20 (citing 15 U.S.C. §§ 1681n, 1681o) (identifying the statutory relief available)).
13 Plaintiff responds that “district courts have inherent power to issue equitable relief,” and
14 “ ‘[a]bsent the clearest command to the contrary from Congress, federal courts retain their power
15 to issue injunctions in suits over which they have jurisdiction.’ ” (ECF No. 20 at 10 (quoting
16 *Califano v. Yamaski*, 442 U.S. 682, 99 S. Ct. 2545 (1979)).) Plaintiff relies on a single case to
17 support her contention, *Andrews v. TransUnion Corp.*, 7 F. Supp. 2d 1056, 1084 (C.D. Cal.
18 1998), *rev’d on other grounds sub nom.* However, Plaintiff does not reference the many district
19 court cases rejecting the Court’s view in *Andrews*.

20 While the Ninth Circuit has not addressed whether a private party may obtain injunctive
21 relief under the FCRA, courts in the Ninth Circuit consistently hold that a private party may not
22 obtain injunctive relief under the FCRA. *See e.g., Howard v. Blue Ridge Bank*, 371 F. Supp. 2d
23 1139, 1145 (N.D. Cal. 2005) (rejecting *Andrews* decision and concluding that “the FCRA does
24 clearly preclude injunctive relief”); *see also Peterson v. Am. Express*, No. CV-14-02056-PHX-
25 GMS, 2016 WL 1158881, at *10 (D. Ariz. Mar. 23, 2016). The Court has discretion whether to
26 grant equitable relief, and federal courts in this district consistently deny injunctive relief under
27 the FCRA to private parties. The Court agrees with its sister courts, and dismisses without leave
28 to amend Plaintiff’s individual request for injunctive relief.

1 ii. *Statutory and Punitive Damages for a Negligent Violation of § 1681i(a)*

2 Defendant argues that “statutory and punitive damages are not available for negligent
3 violations of the FCRA.” (ECF No. 17 at 20 (citing *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47,
4 53 (2007); *Ashby v. Farmers Ins. Co. of Or.*, 565 F. Supp. 2d 1188, 1204 (D. Or. 2008); 15
5 U.S.C. § 1681n.) Plaintiff fails to respond to this argument. (*See generally* ECF No. 21.) An
6 affected consumer may not recover statutory and punitive damages for a *negligent*, as opposed to
7 a *willful*, violation of the FCRA. *Safeco*, 551 U.S. at 53; 15 U.S.C. §§ 1681o(a) (listing damages
8 for negligent violations), 1681n(a)(1)–(a)(2) (listing damages for willful violations). Thus, the
9 Court grants without leave to amend Defendant’s Motion to Dismiss Plaintiff’s request for
10 statutory and punitive damages for a negligent violation of § 1681i(a).

11 D. Defendant’s Motion to Strike Plaintiff’s Class Allegations

12 Defendant moves to strike all of Plaintiff’s claims for class certification because it argues
13 Plaintiff’s claims are atypical and raise insurmountable individual issues. (ECF No. 17 at 21–27.)
14 Defendant argues Plaintiff’s claims are atypical because Plaintiff seeks to represent Chapter 7 and
15 Chapter 13 debtors who are subject to different discharge procedures, and Plaintiff is not similarly
16 situated to other Chapter 7 debtors. (ECF No. 17 at 22–24.) Defendant argues Plaintiff’s claims
17 raise insurmountable individual issues because Plaintiff would have to gather individualized
18 evidence to prove causation and damages to support her class-wide negligence claims, a
19 factfinder would have to consider the relevant circumstances of every debtor dispute to determine
20 if Defendant conducted a “reasonable” reinvestigation, and Defendant would have to scour
21 through PACER to find every consumer who is in bankruptcy to determine what information
22 Defendant did not report. (ECF No. 17 at 24–27.) The Court need not reach the merits of
23 Defendant’s arguments because the Court declines to strike class allegations at this early stage in
24 the proceedings.

25 As to Counts I, II, and IV, the Court denies Defendant’s Motion to Strike Plaintiff’s Class
26 Allegations as moot since the Court dismissed these claims with leave to amend. *Gen. Tel. Co. of*
27 *Sw. v. Falcon*, 457 U.S. 147, 156 (1982) (stating that “a class representative must be part of the
28 class and possess the same interest and suffer the same injury as the class members”) (quotation

1 omitted). As to Count III, “striking is severe and disfavored,” and “many courts have declined to
2 so rule solely on the basis of the allegations in a complaint, preferring to address the propriety of
3 the class action at a later stage in the litigation.” *Khorrami v. Lexmark Int’l Inc.*, No. CV 07-
4 01671 DDP (RCx), 2007 WL 8031909, at *2 (C.D. Cal. Sept. 13, 2007); *Cholakyan v.*
5 *MercedesBenz USA, LLC*, 796 F. Supp. 2d 1220, 1245 (C.D. Cal. 2011) (stating that while “class
6 allegations can be stricken at the pleadings stage, it is in fact rare to do so in advance of a motion
7 for class certification”). Therefore, the Court denies Defendant’s Motion to Strike Plaintiff’s
8 Class Allegations with respect to Count III.

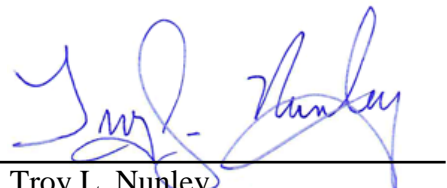
9 **IV. CONCLUSION**

10 For the reasons set forth above, Defendant’s Partial Motion to Dismiss and Strike
11 Plaintiff’s Class Allegations (ECF No. 17) is GRANTED IN PART AND DENIED IN PART.
12 The Court hereby orders as follows:

- 13 1. The Court GRANTS WITH LEAVE TO AMEND Defendant’s Motion
14 to Dismiss Plaintiff’s First and Second Causes of Action for willful and
15 negligent violations of 15 U.S.C. § 1681e(b).
- 16 2. The Court GRANTS WITH LEAVE TO AMEND Defendant’s Motion
17 to Dismiss Plaintiff’s Fourth Cause of Action for a negligent violation
18 of 15 U.S.C. § 1681i(a).
- 19 3. The Court GRANTS WITHOUT LEAVE TO AMEND Defendant’s
20 Motion to Dismiss Plaintiff’s requests for equitable relief, and
21 Plaintiff’s request for statutory and punitive damages for a negligent
22 violation of § 1681i(a).
- 23 4. The Court DENIES Defendant’s Motion to Strike Plaintiff’s Class
24 Allegations with respect to all four claims.

25 IT IS SO ORDERED.

26 Dated: May 7, 2018

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28

Troy L. Nunley
United States District Judge