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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JUNE BENNETT, on
12 behalf of herself and all others
13 similarly situated, and GERALD
14 MCGHEE,
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16 Plaintiffs,
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18 v.
19
20 NORTH AMERICAN BANCARD, LLC,
21 Defendant.
22

Case No.: 17-cv-00586-AJB-KSC

**ORDER DENYING DEFENDANT'S
MOTION TO STRIKE PLAINTIFFS'
CLASS ACTION ALLEGATIONS
(Doc. No. 175)**

23 Presently before the Court is Defendant North American Bancard, LLC's ("NAB")
24 motion to strike class allegations. (Doc. No. 175.) The motion has been fully briefed, (Doc.
25 Nos. 184, 185), and the matter is suitable for determination on the papers. For the reasons
26 set forth below, the Court **DENIES** the motion to strike Plaintiffs June Bennett and Gerald
27 McGhee's ("Plaintiffs") class allegations.
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I. BACKGROUND

Plaintiffs bring this putative class action on behalf of consumers who NAB allegedly
improperly charged undisclosed monthly fees in connection with its credit card processing
service and products. (First Amended Complaint ("FAC"), Doc. No. 156, ¶ 1.) NAB offers
a "Pay-As-You-Go" credit card processing service, which was advertised as a free service
with no setup, monthly, or hidden fees. (*Id.* at ¶ 2.) Plaintiffs were two of NAB's Pay-As-

1 You-Go customers who were charged multiple fees in the form of a \$3.99 per month
2 “inactivity” fee. (*Id.* ¶ 3.) NAB automatically began withdrawing these inactivity fees from
3 its customers’ bank accounts in 2015. (*Id.* ¶ 23.) To date, NAB has not refunded any of the
4 inactivity fees withdrawn from Plaintiffs’ bank accounts. (*Id.* ¶ 16.)

5 Plaintiff McGhee filed the original complaint in this Court in March 2017. (Doc No.
6 1.) NAB then filed a motion to dismiss and/or strike class action claims and related
7 allegations on August 27, 2019 (Doc. No. 60), which was denied (Doc. No. 70). Plaintiffs
8 thereafter filed a motion to certify the class in October 2020 (Doc. No. 84), which the Court
9 denied without prejudice, (Doc. No. 126). On October 1, 2021, Plaintiffs filed the FAC,
10 which added Bennett as a plaintiff. (*See* FAC.) On January 7, 2022, Plaintiffs filed a second
11 motion to certify class, which is still pending before this Court. (Doc. No. 165.) On
12 February 2, 2022, NAB filed the instant motion to strike class action claims. This order
13 follows.

14 **II. LEGAL STANDARD**

15 Under Federal Rule of Civil Procedure 12(f), the court may “strike from a pleading
16 an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”
17 Fed. R. Civ. P. 12(f). A Rule 12(f) motion functions “to avoid the expenditure of time and
18 money that must arise from litigating spurious issues by dispensing with those issues prior
19 to trial” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010)
20 (internal citation and quotations omitted). Rule 12(f) motions to strike are generally
21 regarded with disfavor because of the limited importance of pleading in federal practice,
22 and because they are often used as a delay tactic. *See Cal. Dept. of Toxic Substances*
23 *Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002). Motions to strike
24 are generally not granted unless the matter sought to be stricken could have no possible
25 bearing on the subject matter of the litigation. *In re Wal-Mart Stores, Inc. Wage & Hour*
26 *Litig.*, 505 F. Supp. 2d 609, 614 (N.D. Cal. 2007). Any doubt concerning the import of the
27 allegations to be stricken weighs in favor of denying the motion to strike. *Id.*

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1 Moreover, “[d]ismissal of a class at the pleading stage is rare because ‘the class
2 determination generally involves considerations that are enmeshed in the factual and legal
3 issues comprising the plaintiff’s cause of action.’” *Mirkarimi v. Nev. Prop. 1 LLC*, No.
4 12cv2160-BTM-DHB, 2013 WL 3761530, at *4 (S.D. Cal. July 15, 2013) (quoting *Gen.
5 Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160 (1982)). Thus, although a defendant is not
6 prohibited from moving to strike class allegations before the motion for class certification,
7 courts often decline to grant such motions “because the shape and form of a class action
8 evolves only through the process of discovery.” *Simpson v. Best W. Int’l, Inc.*, No. 3:12-
9 cv-4672-JCS, 2012 WL 5499928, at *9 (N.D. Cal. Nov. 13, 2012) (internal citation and
10 quotations omitted). In rare circumstances, class allegations may be struck prior to
11 discovery where “the complaint demonstrates that a class action cannot be maintained on
12 the facts alleged.” *Sanders v. Apple Inc.*, 672 F. Supp. 2d 978, 990 (N.D. Cal. 2009)

13 **III. DISCUSSION**

14 NAB moves to strike the class allegations pursuant to Rule 12(f). Under that rule, a
15 court may act *sua sponte*, or NAB must file a motion to strike a pleading or portion thereof
16 either before responding to the pleading, or, if a response is not allowed, within twenty-
17 one days after the relevant pleading is served. Fed. R. Civ. P. 12(f).

18 First, several courts within this Circuit have held that Rule 12(f) is an improper
19 vehicle for dismissing class claims and should rather be addressed through Rule 23. *See*
20 *Meyer v. Nat’l Tenant Network, Inc.*, 10 F. Supp. 3d 1096, 1103–04 (N.D. Cal. 2014).
21 Moreover, while class allegations can be stricken at the pleadings stage if the claim could
22 not possibly proceed on a classwide basis, “it is in fact rare to do so in advance of a motion
23 for class certification.” *Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220,
24 1245 (C.D. Cal. 2011). Additionally, although there is some inconsistency within this
25 Circuit, the Court agrees that “a class action is a procedural device, not a claim for relief.”
26 *See Morrelli v. Corizon Health, Inc.*, No. 1:18-cv-1395-LJO-SAB, 2019 WL 918210 (E.D.
27 Cal. Feb. 25, 2019), at *12 (finding it inappropriate to either dismiss class allegations under
28 Rule 12(b)(6) or strike them under Rule 12(f)); *Meyer*, 10 F. Supp. 3d at 1103–04 (denying

1 Defendant’s motion to dismiss and/or strike class action allegations because such
2 arguments are better appropriately addressed through Rule 23),

3 Next, it would be inappropriate against this procedural backdrop to allow NAB to
4 seek certification-related relief now under Rule 12(f). As an initial matter, NAB’s motion
5 is untimely. Here, the relevant pleading is Plaintiffs’ FAC, which was filed on October 1,
6 2021. (*See* Doc. No. 156.) NAB filed its answer on October 22, 2021, so the motion to
7 strike (filed in February 2022) comes three months too late. NAB’s only response to
8 Plaintiff’s timeliness objection is to note that “cases disfavoring a motion to strike are
9 inapplicable where, as here, it is undisputed that extensive discovery has already been
10 completed.” (Doc. No. 185 at 8.) However, NAB fails to cite case law in support of this
11 contention. Moreover, this case has been pending for approximately five years, NAB has
12 already answered the FAC, and Plaintiff has already filed a motion for class certification.
13 To the extent NAB believes class certification is inappropriate, it will have a full and fair
14 opportunity to make its case when it opposes Plaintiff’s certification motion.

15 Lastly, under Rule 12(f)(1), the court may strike material from a pleading “on its
16 own” at any time, but this provision is obviously inapplicable here because the Court is not
17 acting *sua sponte*—it is addressing a motion filed by NAB.


18 Accordingly, the Court **DENIES** NAB’s motion to strike Plaintiffs’ class
19 allegations.

20 **IV. CONCLUSION**

21 For the reasons set forth above, the Court **DENIES** Defendant’s motion to strike
22 Plaintiffs’ class allegations. (Doc. No. 175.)

23
24 **IT IS SO ORDERED.**

25 Dated: February 25, 2022

26 
27 Hon. Anthony J. Battaglia
28 United States District Judge