

**STATE OF MINNESOTA
COUNTY OF DAKOTA**

**DISTRICT COURT
FIRST JUDICIAL DISTRICT**

Gustavo Lopez De La Fuente,
Elvira Mariana Arena Rojas,

Court File No. 19HA-CV-21-717

Plaintiffs,

vs.

ORDER

American Family Insurance,
Brett Lueck Agency, Inc.,
William Goodsell,
Luis Dominguez,

Defendants.

The above-entitled matter came before the Honorable Jerome B. Abrams, Judge of the District Court, on January 18, 2022 remotely by Zoom. Counsel noted their appearances on the record.

Based upon the Court file and proceeding, the Court finds the following:

ORDER

- 1.) Defendants' motion to strike class allegations is **denied**.

Memorandum

Defendants move the Court to strike Plaintiffs' class allegations in this early phase of litigation arguing that the proposed class cannot be certified as a matter of law. Defendants contend the requirements to certify a class are not met in Plaintiff's Complaint. Minnesota Court Rule 23.04(d) authorizes the Court to "make appropriate orders . . . requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly[.]" Minn. R. 23.04(d).

“District courts in other circuits have increasingly declined to address this particular issue at the pleading stage. See *Gonzalez v. Costco Wholesale Corp.*, No. 16-CV-2590 (NGG) (JO), 2018 WL 4783962, at *8 (E.D.N.Y. Sept. 29, 2018) (“[T]his court will defer its resolution of this issue until Plaintiff files a motion for class certification.”); *Gasser v. Kiss My Face, LLC*, No. 17-CV-1675-JSC, 2018 WL 4538729, at * 2 (N.D. Cal. Sept. 21, 2018) (“[A]t this stage of the litigation, where Defendant has brought three motions to dismiss and a motion for judgment on the pleadings, the issue of whether Plaintiffs can and/or should represent consumers outside of New York and California is an issue to be raised at class certification.”); *Campbell v. Freshbev LLC*, 322 F.Supp.3d 330, 337 (E.D.N.Y. 2018) (“Given the unsettled nature of the law following *Bristol-Myers*, the Court will defer on this question until the plaintiff brings a motion for class certification, if he chooses to do so.”) *Knotts v. Nissan North America, Inc.* 346 F.Supp.3d 1310 (D. Minn. 2018).

Indeed, such motions to strike are viewed “with disfavor.” *Daigle v. Ford Motor Co.*, 713 F. Supp.2d 822, 830 (D. Minn. 2010) (citing *Stanbury Law Firm, P.A. v. Internal Revenue Serv.*, 221 F.3d 1059, 1063 (8th Cir. 2000)). The *Daigle* court cited the case of *Rios v. State Farm Fire Casualty Company* noting that where “class discovery would produce information necessary to determine the appropriateness of a class action,” the motion to strike class allegations would be denied. *Daigle*, 469 F. Supp. 2d at 741 (citing *Morales v. Greater Omaha Packing Co.*, WL 5255807, at *2, 2008 U.S. Dist. LEXUS 102565, at *6 (D. Neb. Dec. 15, 2008)).

“[A] court should deny a motion to strike the class allegations unless it is clear from the face of the complaint that a class action cannot be maintained.” *Wilcox v. State Farm Fire & Casualty Co.*, 2016 WL 6908111, at *3, 5 (D. Minn. 2016); (citing *Nobles v. State Farm Mut. Auto. Ins. Co.*, 2012 WL 4090347, at *2 n.1 (W.D. Mo. 2012)). Defendant must convince this

Court that ““no amount of discovery or time will allow for plaintiffs to resolve deficiencies in [the] class definition.” *In re Paulsboro Derailment Cases*, No. CIV. 12-7586 RBK/KMW, 2014 WL 1371712, at *3 (D. N.J. Apr. 8, 2014).

Put simply, Defendants’ attempt to strike the class allegations at this pre-discovery phase is premature. For example, Defendants made claim during the hearing that potential class members will not be able to prove monetary injury. Defendants’ claim was based on its own research into individuals who may have been harmed by the alleged conduct. The trouble is that Plaintiff and this Court cannot, at this stage of the case, simply take Defendant’s word for it and call it a day. Having already sufficiently pled claims in the Complaint, Plaintiff is entitled to both investigate and later prove their claims with the benefit of discovery as well as investigate the full scope of the alleged harm. Defendants’ own investigation may have been thorough and wholly captured everyone included in Plaintiffs claims, but that argument will be for another day. Discovery will determine the appropriateness of the class claims. Until such time, this Court denies Defendant’s motion.

BY THE COURT:

Dated: _____, 2022

Jerome B. Abrams
Judge of District Court