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STATE OF CALIFORNIA
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11
12 Deputy District Attorney MICHELE
HANISEE, an individual,

13 Plaintiff,

14 v.

15 STATE OF CALIFORNIA; and DOES 1
16 through 25, inclusive,

17 Defendants.
18

Case No. 23STCV07718

(Assigned for all Purposes to the
Honorable Upinder S. Kalra)

**DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION TO
STRIKE ALLEGATIONS FROM
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Reservation No. 631026040870

Date: October 11, 2023

Time: 9:00 a.m.

Dept.: 51

Date Action Filed: April 7, 2023

Trial Date: None

1 **I. INTRODUCTION**

2 This case arises out of the unintentional exposure, for a less than 24-hour period, of
3 names, dates of birth, and addresses of individuals who applied for a Carry Concealed Weapon
4 (CCW) permit in connection with the launch of the California Department of Justice’s (CA DOJ)
5 Firearms Dashboard. Plaintiff has sued Defendant State of California and unnamed DOE
6 Defendant employees of the Defendant State alleging she was impacted by the exposure.

7 The State of California brings this motion to strike to address two fundamental
8 defects in Plaintiff’s First Amended Complaint (FAC):

9 *First*, the allegations in the FAC indicate that there is no ongoing conduct that could
10 support Plaintiff’s requests for injunctive or declaratory relief. Plaintiff acknowledges that the
11 data exposure at issue was an isolated incident and that CA DOJ immediately shut down the
12 Firearms Dashboard once it discovered the exposure of personal information. The requests for
13 those remedies therefore should be stricken.

14 *Second*, the allegations in the FAC indicate that the DOE Defendant employees of the
15 State were acting in the scope of their employment. Plaintiff can recover exemplary damages
16 only if the disclosure of personal information was caused by an employee who was *not* acting in
17 the scope of his or her employment. Therefore, Plaintiff’s request for exemplary damages as
18 authorized by statute should be stricken as well.

19 Accordingly, the Court should grant Defendant’s motion to strike from the FAC all
20 references to declaratory and injunctive relief and exemplary damages.

21 **II. ALLEGATIONS IN THE FIRST AMENDED COMPLAINT**

22 Plaintiff sues the State of California alleging that CA DOJ intentionally configured a
23 firearms data web portal to allow users to download her name, date of birth, address, gender,
24 issue date, status and type of her CCW permit, and DOJ-assigned Criminal Identification and
25 Information Number. (FAC ¶¶ 16-18.) In the FAC, Plaintiff acknowledges that the exposure
26 occurred in connection with the launch of the CA DOJ Firearms Dashboard on June 27, 2022, and
27 that CA DOJ “permanently [took] the portal down [] the morning of June 28, 2022.” (FAC ¶
28 20.)

1 Along with the State of California, Plaintiff sues DOE Defendants, alleging “each of the
2 defendants named as DOES 1 through 25, were employees of Defendant State who were
3 responsible for, either intentionally or negligently, in the public release of Plaintiff’s and other
4 CCW permit holders’ private identifying information.” (FAC ¶ 12.)

5 Plaintiff seeks three types of remedies that are not supported by the allegations in the
6 FAC:

- 7 1. “For exemplary damages against DOES where allowed under statute.” (FAC Prayer
8 for Relief No. 2.)
- 9 2. “For preliminary and permanent injunctive relief to prevent the further dissemination
10 or publication of Plaintiff’s home address, date of birth, or CII Number in the
11 possession of Defendants by any of them, whether on the State’s firearms data web
12 portal or any other publicly accessible database maintained by the State or any of its
13 departments or subdivisions.” (FAC Prayer for Relief No. 3.)
- 14 3. “For a declaration by the Court under Code of Civil Procedure section 1060 as to the
15 rights, responsibilities, and obligations of Plaintiff and Defendants to one another, and
16 each of them, including, specifically, as to the obligation of Defendants of the further
17 steps they must take to safeguard and refrain from publicly disclosing information
18 obtained or kept by Defendants as a result of Plaintiff’s application for or holding of a
19 CCW permit, including specifically, the home address, date of birth, and CII
20 information contained therein, and for any other declarations and orders necessary to
21 effect a remedy sought or available under the causes of action pled hereinabove.”
22 (FAC Prayer for Relief No. 4.)

23 **III. PROCEDURAL HISTORY**

24 The State of California intended to move to strike the same remedies from the original
25 Complaint. Counsel for the Defendant State met and conferred with Plaintiff’s counsel, and
26 Plaintiff’s counsel advised defense counsel that Plaintiff would amend the Complaint to address
27 the issues raised in connection with the planned motion.
28

1 On June 15, 2023, Plaintiff filed the FAC. As reflected in the redline attached as Exhibit
2 A, Plaintiff made only minor cosmetic changes and did not add any factual allegations to support
3 the requests for exemplary damages, or declaratory or injunctive relief. Accordingly, the State of
4 California brings this Motion to strike those requests. (See Exhibit A, Decl. of Laura Lively
5 Babashoff.)

6 **IV. LEGAL STANDARD**

7 “The court may, upon a motion made pursuant to Section 435, or at any time in its
8 discretion, and upon terms it deems proper:

9 (a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

10 (b) Strike out all or any part of any pleading not drawn or filed in conformity with the
11 laws of this state, a court rule, or an order of the court.”

12 A motion to strike should be granted if the complaint includes a demand for judgment
13 “requesting relief not supported by the allegations of the complaint or cross-complaint.” (Code
14 Civ. Proc., § 431.10, subd. (b).)

15 **V. ARGUMENT**

16 **A. Plaintiff’s Request for Declaratory Relief is Not Supported by the Allegations 17 in the FAC**

18 Plaintiff’s allegations confirm that there is no ongoing controversy here that could be the
19 subject of declaratory relief. (See Code Civ. Proc. § 1060.) “[D]eclaratory relief is appropriate
20 only where there is an actual controversy, not simply an abstract or academic dispute.” (*Connerly*
21 *v. Schwarzenegger*, (2007) 146 Cal. App. 4th 739, 746, citation omitted.) Indeed, a plaintiff may
22 not pursue declaratory relief where, as here, only past wrongs are involved and where relief is
23 fully and adequately determined by other claims. (*Id.*; see also *Travers v. Loudon*, (1967) 254
24 Cal.App.2d 926, 931 [“There is unanimity of authority to the effect that the declaratory procedure
25 operates prospectively, and not merely for the redress of past wrongs.”].)

26 Plaintiff alleges that the exposure occurred in connection with the launch of the firearms
27 data web portal on June 27, 2022 and that CA DOJ “permanently [took] the portal down [] the
28 morning of June 28, 2022.” (FAC ¶ 20.) There is no ongoing controversy, then, that could

1 support the need for prospective relief. Accordingly, the Court should strike all references to
2 declaratory relief in the FAC.

3 **B. Plaintiff’s Request for Injunctive Relief is Not Supported by the Allegations**
4 **in the FAC**

5 Plaintiff cannot pursue injunctive relief for the same reason. “[T]here is no equitable
6 reason for an injunction where the conduct to be proscribed has, in good faith, been discontinued
7 and there is no evidence that the acts will recur.” (*Connerly, supra*, 146 Cal. App. 4th 750,
8 citation omitted.)

9 Here, Plaintiff requests an injunction to prevent “further dissemination or publication of”
10 her PII by Defendants (FAC Prayer for Relief No. 3), but she has not alleged any real or
11 immediate threat of further disclosure and instead alleges that the exposure of her personal
12 information was “permanently” resolved within 24 hours. (FAC ¶ 20.) Because Plaintiff has
13 pled no facts showing ongoing disclosure of her personal information, she cannot pursue the
14 injunction she seeks and the Court should strike that portion of the Prayer for Relief.

15 **C. Defendants Are Exempt from Exemplary Damages.**

16 Plaintiff cannot pursue exemplary damages because Plaintiff alleges she is pursuing
17 claims against government employees acting within the scope of their authority. (FAC ¶ 12.) As
18 the California Supreme Court recently reaffirmed, Government Code section 818 “shields public
19 entities from punitive damages, which are also sometimes referred to as exemplary damages,”
20 unless specifically authorized by the Legislature. (*Los Angeles Unified Sch. Dist. v. Superior Ct.*
21 *of Los Angeles County*, (June 1, 2023, S269608) __ P.3d __ [2023 WL 3745196, at *3]
22 [concluding Section 818 “immunizes public entities from damages awarded under Civil Code
23 section 3294 and from other damages that would function, in essence, as an award of punitive or
24 exemplary damages.”].)

25 Plaintiff does not identify any such authorization to pursue exemplary damages against
26 any of the defendants. She asserts one statutory claim for violation of the Information Practices
27 Act under Section 1798.3. (FAC ¶¶ 31-37.) A subsection of the Information Practices Act does
28 authorize recovery of exemplary damages, but it only authorizes such relief against “[a]ny person,

1 **other than an employee of the state or of a local government agency acting solely in his or**
2 **her official capacity**, who intentionally discloses information, not otherwise public, which they
3 know or should reasonably know was obtained from personal information maintained by a state
4 agency.” (Civ. Code, §1798.53 (emphasis added).)


5 Here, Plaintiff alleges that DOE defendants are “employees of Defendant State” who were
6 “acting within the course and scope” of their employment with the State. (FAC ¶¶ 12, 11.)
7 Accordingly, Plaintiff has not pled the requisite statutory authority to pursue exemplary damages
8 and that portion of the Prayer for Relief also should be stricken. (See, e.g., *Fowler v. Howell*,
9 (1996) 42 Cal.App.4th 1746, 1751, citation omitted [holding the proper inquiry for determining
10 scope of employment is not whether any alleged wrongful act itself “was authorized but whether
11 it was committed in the course of a series of acts of the [employee] which were authorized by the
12 [employer.]”].)

13 **VI. CONCLUSION**

14 For all the foregoing reasons, the State of California respectfully requests that Plaintiff’s
15 requests for declaratory relief, injunctive relief, and exemplary damages be stricken from the
16 FAC.

17
18 Dated: July 18, 2023

MORRISON & FOERSTER LLP

19
20 By: 
21 Nancy R. Thomas

22 *Attorneys for Defendant*
23 STATE OF CALIFORNIA
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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 707 Wilshire Boulevard, Suite 6000, Los Angeles, California 90017-3543. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on July 18, 2023, I served a copy of:

DEFENDANT’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO STRIKE ALLEGATIONS FROM PLAINTIFF’S FIRST AMENDED COMPLAINT

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system from NCaruthersDodson@mofoc.com to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251.

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through **FIRST LEGAL'S** electronic mail system to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Los Angeles, California, this 18th day of July, 2023.

Nieka Caruthers-Dodson (typed) *N. Caruthers-Dodson* (signature)