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Superior Court of California,
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David W. Slayton,
Executive Officer/Clerk of Court,
By A. Lopez, Deputy Clerk

11 Attorneys for Plaintiff
12 Deputy District Attorney Michele Hanisee

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

15 STANLEY MOSK COURTHOUSE

16 Deputy District Attorney MICHELE
17 HANISEE, an individual,

18 Plaintiff,

19 v.

20 STATE OF CALIFORNIA; and DOES 1
21 through 25, inclusive,

22 Defendants.

CASE NO: 23STCV07718

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO STRIKE
ALLEGATIONS FROM FIRST AMENDED
COMPLAINT

Date: October 11, 2023

Time: 9:00 a.m.

Dept: 51

23 I. INTRODUCTION

24 Defendant State of California seeks to strike from Plaintiff Michele Hanisee's First
25 Amended Complaint ("FAC") requests for two types of remedies. First, the State contends that
26 Plaintiff has failed to plead allegations sufficient to entitle her to injunctive or declaratory relief.
27 Second, the State contends she has failed to plead allegations sufficient to entitle her to exemplary
28 damages against Doe defendants. The State is wrong on both points.

Regarding equitable relief, the State is wrong because it fails to acknowledge or account
for the fact that the State still retains the data it leaked once and could leak again. Plaintiff's
concerns regarding the State's current, post-leak data management practices of that data allege a
sufficient ongoing controversy for which prospective declaratory and injunctive relief is
appropriate.

1 Regarding exemplary damages against Does, the State is wrong because Plaintiff pled her
2 allegations regarding entitlement to exemplary damages only from Doe contractors and
3 employees and not from the State. And as to those Does, she has further alleged that she is
4 entitled to exemplary damages only if she proves that such Does were not acting in the capacity of
5 an employee or official of the State. Accordingly, the State’s motion to strike should be denied
6 entirely.

7 II. ARGUMENT

8 A. PLAINTIFF HANISEE HAS PROPERLY ALLEGED A BASIS FOR INJUNCTIVE AND
9 DECLARATORY RELIEF DUE TO THE STATE CONTINUING TO POSSESS HER DATA AND
 HER PROSPECTIVE SECURITY CONCERNS

10 The State contends that because the DOJ removed Plaintiff’s personal data from the
11 Internet the day after the initial publication on the State’s webpage, there is no “ongoing”
12 controversy that warrants declaratory or injunctive relief. (Defendant’s Motion to Strike (“MTS”)
13 4:17-5:14.) This argument ignores that the DOJ still possesses her confidential data. It has not
14 dispossessed itself of the data, destroyed the data, or otherwise provided legally enforceable
15 assurances that Plaintiff’s data still in the State’s possession will not be published again at a future
16 date, perhaps in a re-rollout of the State’s ill-fated concealed carry weapon licensure website. (See
17 FAC, ¶ 34.)

18 Plaintiff’s allegations about her concerns as to what the State might do with her personal
19 data in the future are both reasonable and justified (1) given the egregious data-safety breach at
20 the center of this suit, (2) given that Attorney General Bonta’s official policy continues to be to
21 enhance public transparency concerning concealed carry weapon licensure, and (3) given yet
22 another personal information data leak by the State involving licensees’ recreational fishing
23 license data occurred in only July of this year. (See FAC, ¶ 34; and see July 7, 2023 Informational
24 Notice: *Recent CDFW System Security Breach*, a true and correct copy of which is attached to
25 Plaintiff’s Request for Judicial Notice In Support of Plaintiff’s Opposition as Exhibit “A”
26 thereto.) Indeed, the Court is obligated at this stage of the litigation to ignore the State’s unsworn
27 representation that there is “no evidence” that its grossly negligent data-safety practices will recur
28

1 with her data. (MTS at 5:8-14.) This obligation would exist even if the State hadn't leaked more
2 confidential data only a year after the dangerous leak that is the subject of this lawsuit.

3 Thus, the question of whether the State's post-breach data handling practices are sufficient
4 to address Plaintiff Hanisee's concerns about the potential for future mishandling of her data is a
5 live controversy eligible for prospective equitable relief. (See FAC, ¶ 36 and at 15:14 & 15:18-28
6 [Prayer for Relief at ¶¶ 3-4 thereof].) Moreover, because this is a pleadings challenge without the
7 benefit of any discovery into whether the State's data handling practices are, as they now claim,
8 sufficient to prevent a future leak of Plaintiff's data still in their possession, this is not the
9 appropriate setting to determine as a matter of undisputed fact the propriety of how the DOJ
10 continues to store and handle Ms. Hanisee's private data.

11 B. PLAINTIFF'S REQUEST FOR EXEMPLARY DAMAGES AGAINST DOES IS PROPERLY
12 PLED BECAUSE PLAINTIFF DOES NOT SEEK SUCH DAMAGES AGAINST THE STATE OR
13 A STATE EMPLOYEE ACTING IN AN OFFICIAL CAPACITY

14 The State moves to strike Plaintiff's request for exemplary damages against Doe
15 defendants, arguing that Government Code section 818 bars it. (MTS at 5:15-6:12.) The State
16 acknowledges that Civil Code section 1798.53 permits exemplary damages, but not against "an
17 employee of the state or of a local government agency acting solely in his or her official
18 capacity." (*Ibid.*) Both Plaintiff and the State are in agreement on these points.

19 Yet the parties are seemingly not in agreement on what Plaintiff has alleged as to her
20 entitlement to exemplary damages. The FAC very clearly does not seek exemplary damages from
21 the State itself: "WHEREFORE, Plaintiff prays for the following relief: . . . For exemplary damages
22 **against DOES** where allowed under statute." (See FAC at 15:14 & 15:17 [Prayer for Relief at ¶ 2
23 thereof], bold added.)¹ And the only allegation of Plaintiff's entitlement to exemplary damages

24 ¹ Although Plaintiff has never sought exemplary damages from the State, Plaintiff amended her
25 original complaint to clarify that she was not seeking exemplary damages from the State in
26 response to a prior meet-and-confer effort by the State. (Compare original Complaint at 15:11 &
27 15:14 [¶ 2 of the Prayer for Relief identifying exemplary damages relief] with FAC at 15:14 &
28 15:17 [amended ¶ 2 of the Prayer for Relief clarifying that exemplary damages relief are only
sought against Does where allowed by statute]. And compare original Complaint, ¶ 44 [seeking
exemplary damages against Does only where they were acting outside their capacity as an
employee or official of the State] with FAC, ¶ 45 [alleging the same].)

1 from Doe contractors and Doe employees is that she's entitled to exemplary damages from a Doe
2 who "acted in a capacity other than his or her capacity as an employee or official of Defendant
3 State or any of its departments or subdivisions." (See FAC, ¶ 45.) No other allegation regarding
4 exemplary damages are contained in the FAC.

5 At the pleadings stage, we do not know whether an employee or a contractor is
6 responsible for the data leak, whether the leak was accidental or malicious, and whether those
7 Does were acting under the authority of the State or not when they caused or participated in the
8 leak. This lack of information about the actors, their roles, and their motivations at the pleading
9 stage makes Plaintiff's efforts to strike this request for exemplary damages against these Does
10 inappropriate.

11 The State may very well claim in discovery that the leak of Plaintiff's information was
12 caused by a rogue employee or contractor acting outside whatever authorization they might have
13 had been given by the State. As the State itself acknowledges, such unauthorized conduct, even
14 by a State employee, would not be privileged under Government Code section 818, and thus
15 exemplary damages would be an available remedy against that employee. (MTS at 5:26-6:2.)

16 As the State also impliedly admits, at the pleading stage, none of the parties has yet
17 conducted "the proper inquiry for determining scope of employment" . . . whether [an alleged
18 wrongful act] was committed in the course of a series of acts of the [employee] which were
19 authorized by the [employer.]" (MTS at 6:9-12, some brackets in original, citing *Fowler v.*
20 *Howell* (1996) 42 Cal.App.4th 1746, 1751.) However, Plaintiff has sufficiently pled that those
21 series of acts by Does that led to the leak *could have* been by an individual acting outside the
22 scope of their employment for the State. That is all that is necessary at this point.

23 III. CONCLUSION

24 The State's motion to strike should be denied. Plaintiff has properly pled bases for the
25 equitable and exemplary relief her complaint requests.

1 Dated: September 26, 2023

MICHEL & ASSOCIATES, P.C.

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8 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I, Christina Castron, am employed in the City of Long Beach, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
6 business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

7 On September 26, 2023, I served the foregoing document(s) described as:

8 **PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO STRIKE ALLEGATIONS**
9 **FROM FIRST AMENDED COMPLAINT**

10 on the interested parties in this action by placing
11 the original
12 a true and correct copy
13 thereof by the following means, addressed as follows:

14 Laura Lively, Esq.
15 MORRISON FOERSTER
16 707 Wilshire Boulevard, Suite 6000
17 Los Angeles, CA 90017-3543
18 LLively@mofo.com
19 *Attorneys for Defendant*

20 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
21 processing correspondence for mailing. Under the practice it would be deposited with the
22 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
23 California, in the ordinary course of business. I am aware that on motion of the party
24 served, service is presumed invalid if postal cancellation date is more than one day after
25 date of deposit for mailing an affidavit.

26 (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to
27 accept service by electronic transmission, I caused the documents to be sent to the persons
28 at the electronic notification addresses listed above.

(STATE) I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of the member of the bar of this
court at whose direction the service was made.

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


CHRISTINA CASTRON