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David W. Slayton,
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7 Attorneys for Defendant
STATE OF CALIFORNIA
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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.

Case No. 23STCV07718

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

**DEFENDANT'S REPLY IN SUPPORT
OF 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 In her Opposition to the Motion to Strike (“Motion”), Plaintiff confirms her failure to
3 plead facts sufficient to support the First Amended Complaint’s (“FAC”) requests for declaratory
4 and injunctive relief and exemplary damages. *First*, Plaintiff admits that her requests for
5 declaratory and injunctive relief are based on nothing more than conjecture that a data exposure at
6 the California Department of Justice (“CA DOJ”) “*could*” “*perhaps*” happen again. Such
7 speculation is insufficient to support declaratory and injunctive relief against any kind of
8 defendant, and particularly insufficient against a government defendant like Defendant State of
9 California, about which California statutes and binding precedent require that courts presume
10 lawful and appropriate action unless such a presumption is rebutted with evidence. *Second*,
11 Plaintiff admits that she cannot recover exemplary damages from government employees acting
12 within the scope of their employment. The FAC expressly alleges that the DOE defendants acted
13 within the scope of their employment and therefore an award of exemplary damages is prohibited.

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

16 **II. PLAINTIFF ADMITS THAT HER REQUESTS FOR DECLARATORY AND**
17 **INJUNCTIVE RELIEF ARE NOT SUPPORTED BY THE ALLEGATIONS IN**
18 **THE FAC**

19 Plaintiff admits that the FAC contains no allegations of any ongoing conduct by CA DOJ
20 that would support declaratory or injunctive relief.

21 Instead, Plaintiff argues that merely because CA DOJ retains the data at issue, “it ... *could*
22 leak again” “*perhaps* in a re-rollout” of the Firearms Dashboard. (Oppo., at 1, 2, emphases
23 added.) Such speculation is insufficient to support declaratory and injunctive relief. (*Connerly v.*
24 *Schwarzenegger* (2007) 146 Cal.App.4th 739, 746, 750 citation omitted, [“[D]eclaratory relief is
25 appropriate only where there is an actual controversy, not simply an abstract or academic dispute.
26 . . . [T]here is no equitable reason for an injunction where the conduct to be proscribed has, in
27 good faith, been discontinued and there is no evidence that the acts will recur.”].) This is
28 especially true here because the FAC acknowledges that the data exposure at issue was an
isolated incident and that CA DOJ immediately shut down the Firearms Dashboard once it

1 discovered the exposure of personal information. (FAC ¶ 20 [CA DOJ “permanently [took] the
2 portal down [] the morning of June 28, 2022.”].)

3
4 Moreover, unsupported speculation about potential future exposure is particularly
5 insufficient when alleged against a government defendant like Defendant. Under Evidence Code
6 section 664, “[t]here is a presumption, well recognized by the cases, that public officers will carry
7 out their functions and exercise their powers in accordance with the law.” (*Housing Authority v.*
8 *Forbes* (1942) 51 Cal.App.2d 1, 9, citations omitted; see also e.g., *In re Hartmann* (1938) 25
9 Cal.App.2d 55, 60 [The presumption is that every officer will perform his full duty in a fair and
10 lawful manner.]; Evid. Code, § 664 [“It is presumed that official duty has been regularly
11 performed.”].) Thus, Plaintiff’s speculation about a hypothetical future data release is not enough
12 to state claims for declaratory and injunctive relief, because statutes require that the Court
13 presume that CA DOJ will *not* allow such an alleged exposure to occur again.

14 Plaintiff’s reference to notice by the California Department of Fish and Wildlife
15 (“CDFW”) of a recent data exposure is entirely irrelevant. As Exhibit A to Plaintiff’s Request for
16 Judicial Notice¹ makes clear, “the California Department of Fish and Wildlife (CDFW) was made
17 aware of a cybersecurity breach ***within the network of a third-party vendor . . .***” (Request for
18 Judicial Notice (“RJN”), Ex. A, emphasis added.) A breach of a third-party’s data network has
19 no relevance to whether government employees may in the future fail to safeguard data on a
20 government website. Nor in any event is the experience of one California government
21 department (CDFW) relevant to determination of whether a claim can be stated against another
22 California government department (CA DOJ).

23 For these reasons, the Court should strike all references to declaratory and injunctive relief
24 in the FAC.

25
26 ¹ Moreover, the truth of the matters stated in Exhibit A to Plaintiff’s RJN are not noticeable.
27 (*Grosz v. California Dept. of Tax & Fee Admin.* (2023) 87 Cal.App.5th 428, 448, *as modified on*
28 *denial of reh’g* (Jan. 23, 2023), citations omitted [“Taking judicial notice of a document is not
the same as accepting the truth of its contents or accepting a particular interpretation of its
meaning.... While courts take judicial notice of public records, they do not take notice of the truth
of matters stated therein.”]).

1 **III. PLAINTIFF ADMITS THAT HER REQUEST FOR EXEMPLARY DAMAGES IS**
2 **PROPERLY STRICKEN**

3 Plaintiff admits that she cannot recover exemplary damages from government employees
4 acting within the scope of their employment. (Oppo., at 3.) Yet this is exactly from whom she
5 requests exemplary damages.

6 The Prayer for Relief requests exemplary damages from DOE defendants. (FAC Prayer
7 for Relief No.3.) The FAC expressly defines DOE Defendants as “employees of Defendant
8 State” who were “acting within the course and scope” of their employment with the State. (FAC
9 ¶¶ 12, 11.) Because both parties agree that Plaintiff cannot recover exemplary damages from
10 employees acting within the scope of their employment, the Court should strike all references to
11 exemplary damages in the FAC.

12 **IV. CONCLUSION**

13 For all of the foregoing reasons, Defendant State of California respectfully requests that
14 the Court grant the Motion to Strike in its entirety.

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16
17 Dated: October 04, 2023

MORRISON & FOERSTER LLP

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20 By: /s/ Dan Marmalefsky
Dan Marmalefsky

21 *Attorneys for Defendant*
22 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 October 4, 2023 I served a copy of:

DEFENDANT’S REPLY IN SUPPORT OF MOTION AND MOTION TO STRIKE ALLEGATIONS FROM PLAINTIFF’S FIRST AMENDED COMPLAINT

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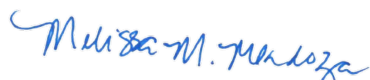
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Los Angeles, California, this 4th day of October, 2023.



MELISSA M. MENDOZA