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DEPARTMENT 51 - LAW AND MOTION RULINGS

1. If you wish to submit on the tentative ruling, please email the clerk at SMCdept51@lacourt.org (and "cc" all other parties in the same email) and notify all other parties in advance that you will not be appearing at the hearing. Include the word "SUBMISSION" in all caps in the subject line and include your name, contact information, the case number, and the party you represent in the body of the email. If you do not have access to the internet, you may call the clerk at (213) 633-0351.

If you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear and argue the motion, and the Court may decide not to adopt the tentative ruling. Please note that the tentative ruling is not an invitation, nor an opportunity, to file any further documents relative to the hearing in question which are not authorized by statute or Rule of Court.

2. For any motion where no parties submit to the tentative ruling in advance, and no parties appear at the motion hearing, the Court may elect to either adopt the tentative ruling or take the motion off calendar, in its discretion.

3. DO NOT USE THE ABOVE EMAIL FOR ANY PURPOSE OTHER THAN TO SUBMIT TO A TENTATIVE RULING. The Court will not read or respond to emails sent to this address for any other purpose.

Case Number: 23STCV07718 **Hearing Date:** October 11, 2023 **Dept:** 51

Tentative Ruling

Judge Upinder S. Kalra, Department 51

[Signature]
FILED
Superior Court of California
County of Los Angeles
OCT 11 2023
David W. Stayton, Executive Officer/Clerk of Court
By: C. Crow, Deputy

HEARING DATE: October 11, 2023

CASE NAME: Hanisee v. State of California

CASE NO.: 23STCV07718

MOTION TO STRIKE WITHOUT DEMURRER

MOVING PARTY: Defendant State of California

RESPONDING PARTY(S): Plaintiff Michele Hanisee

REQUESTED RELIEF:

10/12/2023

An order striking Page 15, line 17 from the First Amended Complaint;[1]

An order striking Page 15, lines 18-22 from the First Amended Complaint;[2] and

An order striking Page 15, line 23 – Page 16, line 2 from the First Amended Complaint.[3]

TENTATIVE RULING:

Defendant's Motion to Strike is DENIED as to Page 15, line 17 of the First Amended Complaint;

Defendant's Motion to Strike is GRANTED as to Page 15, lines 18-22 of the First Amended Complaint; and

Defendant's Motion to Strike is GRANTED as to Page 15, line 23 – Page 16, line 2 from the First Amended Complaint.

STATEMENT OF MATERIAL FACTS AND/OR PROCEEDINGS:

On April 7, 2023, Plaintiff Deputy District Attorney Michele Hanisee (Plaintiff) filed a Complaint against Defendant State of California (Defendant).

On June 15, 2023, Plaintiff filed a First Amended Complaint (FAC) and served it via electronic service on Defendant's counsel. The FAC has five causes of action for: (1) Violation of California's Information Privacy Act; (2) Violation of Right to Privacy Under Article 1, Section 1 of the California Constitution; (3) Intentional Infliction of Emotional Distress; (4) Negligent Infliction of Emotional Distress; and (5) Public Disclosure of Private Facts.[4]

Plaintiff was a Deputy District Attorney who prosecuted criminal matters.[5] Plaintiff alleges that on June 27, 2022, California Attorney General Rob Bonta leaked Plaintiff's and others' personally identifying information concerning concealed carry weapons (CCW) permits as a political stunt. Specifically, Plaintiff identifies an online portal that allows public users to download an excel spreadsheet containing information about CCW holders. (FAC ¶¶ 16-19.) Plaintiff alleges that the Department of Justice took the portal down on June 28, 2022. (FAC ¶ 20.)

Defendant timely filed the instant motion to strike on July 18, 2023. (CCP § 1010.6(a)(3) (B).) Plaintiff timely filed an opposition on September 28, 2023. Defendant timely filed a reply on October 4, 2023.

LEGAL STANDARD:

Request for Judicial Notice

The court grants Plaintiff's request for judicial notice as to Exhibit A. (Evid. Code § 452(c), (h); See *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23,37.) However, the court only takes judicial notice of the foregoing documents only as to "the existence, content and authenticity of public records and other specified documents"; it does not take judicial notice of the truth of the factual matters asserted in those documents. (*Dominguez v. Bonta* (2022) 87 Cal. App. 5th 389, 400.)

Motion to Strike

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike any irrelevant, false, or improper matter inserted in any pleading. (Code Civ. Proc., (CCP) § 436(a).) The court may also strike all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (*Id.*, § 436(b).) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (*Id.* § 437.) "When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend." (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)

Irrelevant matter includes: allegations not essential to the claim or defense, allegations "neither pertinent to nor supported by an otherwise sufficient claim or defense," or a demand for judgment "requesting relief not supported by the allegations of the complaint or cross-complaint." (CCP § 431.10(b).)

Meet and Confer

Prior to filing a demurrer, the demurring party is required to satisfy their meet and confer obligations pursuant to Code of Civ. Proc. §430.41, and demonstrate that they so satisfied their meet and confer obligation by submitting a declaration pursuant to Code of Civ. Proc. §430.41(a)(2) & (3). The Declaration of Laura Lively Babashoff indicates that the parties met and conferred on July 12, 2023, but were unable to resolve the issues. (Dec. Babashoff, ¶¶ 2-4.)

ANALYSIS:

Declaratory Relief

Defendant argues that declaratory relief is improper because Plaintiff's claims concern past wrongs, not an ongoing controversy. Plaintiff contends that Defendant still possesses Plaintiff's data, has not dispossessed the data, destroyed it, or otherwise provided legally enforceable assurances that they will not publish the data again.^[6] (See also RJN Ex. A^[7].) Alternatively,

plaintiff argues that now is not the appropriate time for this challenge since parties have not yet conducted discovery.^[8]

A plaintiff's declaratory relief complaint must specifically allege that an actual, present controversy exists, and must state the facts of the respective claims concerning the disputed subject matter.^[9] (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746 (*Connerly*)). A sufficient complaint: (1) sets forth facts showing the existence of an actual controversy relating to the parties' legal rights and duties, and (2) requests the court to adjudge these rights and duties. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606; *Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, 751; see also *Travers v. Loudon* (1967) 254 Cal.App.2d 926, 931-32 (*Travers*) [commenting that declaratory relief may be appropriate for parties with a continuing relationship].) A declaratory relief claim should not be used to determine issues that are already engaged by other causes of action. (*Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324.)

In *Connerly*, the plaintiff sought declaratory relief that a law was unconstitutional and to prevent the government from enforcing it. (*Connerly, supra*, at 746.) The Court of Appeals found no actual controversy because the Supreme Court definitively ruled that the challenged law was unconstitutional and there were no allegations that the State threatened to enforce the law anyway. (*Id.* at p. 747.) Like *Connerly*, where the offending law was definitively resolved, here, the FAC alleges that the CA DOJ "permanently" took the firearms data web portal offline on June 28, 2022. (FAC ¶ 20.) In other words, Plaintiff acknowledges that they are seeking declaratory relief for a past wrong, not an ongoing controversy. Moreover, there does not appear to be any dispute that the disclosure of this information, if it occurred again, would be wrongful. Stated otherwise, there is no present dispute or threat of a future dispute relating to the parties' legal rights and duties.

Accordingly, Plaintiff's request that the court Order Defendant to do more than take down the website by articulating "further steps [they] must take to safeguard and refrain from publicly disclosing information obtained or kept by Defendants as a result of Plaintiff's application for or holding of a CCW permit" (Prayer ¶ 4) is not really a prayer for Declaratory Relief, but rather, Plaintiff is essentially requesting the court: (1) to remind Defendant of its duty to follow the law and (2) to have Defendant provide Plaintiff a plan on they will follow the law in the future. (Prayer ¶ 4.) Plaintiff provides no authority to support this two-fold request as a appropriately labeled Declaratory Relief.

Accordingly, the court GRANTS Defendant's Motion to Strike the portions of the FAC that seek declaratory relief.

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Injunctive Relief

The parties raise the same arguments regarding Plaintiff's request for injunctive relief as for declaratory relief.

"[I]njunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed." (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1266.)

Plaintiff's request for injunctive relief fails for the same reasons as her request for declaratory relief. Plaintiff has not alleged a threatened future injury, but only an injury that occurred wholly in the past. (FAC ¶¶ 5, 16, 17, 18, 19, 20, 21.)^[10]

Accordingly, the court GRANTS Defendant's Motion to Strike the portions of the FAC that seek injunctive relief.

Exemplary Damages

Defendant argues that Plaintiff cannot seek exemplary damages against the DOE defendants because they are immune by acting under their official capacity as state employees. Plaintiff contends that the FAC does not seek exemplary damages from immune employees.

A plaintiff cannot recover punitive, or exemplary, damages from government employees acting solely in their official capacity. (Gov. Code § 818; see Civ. Code § 1798.53 ["other than an employee of the state or of a local government agency acting solely in his or her official capacity"].)

Upon reviewing the FAC, the court declines to delve into Defendant's argument to strike the exemplary damages request because the request is not directed at Defendant.^[11]

Accordingly, the court DENIED Defendant's Motion to Strike the portions of the First Amended Complaint pertaining to the request for exemplary damages.

CONCLUSION:

For the foregoing reasons, the Court decides the pending motion as follows:

Defendant's Motion to Strike is DENIED as to Page 15, line 17 of the First Amended Complaint;

Defendant's Motion to Strike is GRANTED as to Page 15, lines 18-22 of the First Amended Complaint; and

Defendant's Motion to Strike is GRANTED as to Page 15, line 23 – Page 16, line 2 from the First Amended Complaint.

Moving party is to give notice.

IT IS SO ORDERED.

Dated: October 10, 2023



UPINDER S. KALRA

Upinder S. Kalra

Judge of the Superior Court

[1] "For exemplary damages against DOES where allowed under statute;"

[2] "For preliminary and permanent injunctive relief to prevent further dissemination or publication of Plaintiff's home address, date of birth, or CII Number in the possession of Defendants by any of them, whether on the State's firearms data web portal or any other publicly accessible database maintained by the State or any of its departments or subdivisions;"

[3] For a declaration by the Court under Code of Civil Procedure section 1060 as to the rights, responsibilities, and obligations of Plaintiff and Defendants to one another, and each of them, including, specifically, as to the obligation of Defendants of the further steps they must take to safeguard and refrain from publicly disclosing information obtained or kept by Defendants as a result of Plaintiff's application for or holding of a CCW permit, including specifically, the home address, date of birth, and CII information contained therein, and for any other declarations and orders necessary to effect a remedy sought or available under the causes of action pled hereinabove;"

[4] The FAC incorrectly labels the fifth cause of action as a sixth cause of action.

[5] Plaintiff has previously appeared before Hon. Upinder S. Kalra while he was assigned to the Criminal Division.

[6] Plaintiff cites no authority to support her position.

[7] Plaintiff refers to this to indicate the potential for another data leak of her information.

[8] Plaintiff's alternative argument cuts both ways. Plaintiff is welcome to request leave to file an amended complaint if she discovers evidence to support declaratory relief.

[9] Plaintiffs who seek declaratory relief tend to file them in the context of contract claims, interpreting statutes, or future rights. (See, e.g., *Market Lofts Comm. Ass'n v. 9th St. Market Lofts, LLC* (2014) 222, Cal.4th 924, 931 [party seeking interpretation of agreements]; *Columbia Pictures Corp. v. De Toth* (1945) 25 Cal.2d 753, 760 [oral employment contract]; *California Pub. Records Research, Inc. v. County of Yolo* (2016) 4 Cal.5th 150, 185 [interpreting statute]; *Monterey Coastkeeper v. Central Coast Regional Water Quality Control Bd.* (2022) 76 Cal.5th 1, 13 [future rights].) Here, Plaintiff's FAC has causes of action for violating laws and torts.

[10] In regards to Plaintiff's argument that through discovery, Plaintiff may learn that Defendant's "handling practices" are deficient to prevent future leaks, if Plaintiff adduces such evidence, Plaintiff may always seek to amend the pleadings.

[11] Defendant cites to *Los Angeles Unified School Dist. v. Superior Court* 14 Cal.5th 758 for the proposition that public entities are shielded from punitive damages. The parties do not dispute this. Instead, Defendant seeks to strike exemplary damages against the DOE defendants who happen to work for a public entity. Defendant is not a "Doe." Nor is there any representation that their counsel currently represents these "Does." Moreover, the court notes that there are conflicting allegations. First, the FAC has two allegations of "course and scope" of employment. (FAC ¶¶ 11, 62.) Second, the FAC has two other allegations that comport to the law excluding employees who were acting in their official capacity. (FAC ¶¶ 12, 45.)

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