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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

12 TRAVIS LUCIANO,

13 Plaintiff,

14 v.

15 CALIFORNIA DEPARTMENT OF
16 CORRECTIONS AND
17 REHABILITATION,

18 Defendant.

Case No. 22-cv-734-MMA (RBB)

**ORDER GRANTING IN PART
DEFENDANT’S MOTION TO
STRIKE; AND**

[Doc. No. 20]

**GRANTING DEFENDANT’S
MOTION TO DISMISS CLAIM FOR
PUNITIVE DAMAGES**

[Doc. No. 21]

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23 On January 30, 2023, Plaintiff Travis Luciano filed a Third Amended Complaint
24 against the California Department of Corrections and Rehabilitation (“Defendant” or
25 “CDCR”). *See* Doc. No. 19 (“TAC”). Defendant now moves to strike certain allegations
26 in Plaintiff’s Third Amended Complaint and dismiss Plaintiff’s request for punitive
27 damages. *See* Doc. Nos. 20, 21. Both motions are fully briefed, *see* Doc. Nos. 23–25,
28 and the Court took the matters under submission and without oral argument pursuant to

1 Civil Local Rule 7.1.d.1. *See* Doc. No 22. For the reasons set forth below, the Court
2 **GRANTS IN PART** Defendant’s motion to strike and **GRANTS** Defendant’s motion to
3 dismiss.

4 **I. BACKGROUND**¹

5 This case is before the Court for review of Plaintiff’s third amended pleading and
6 Defendant’s third and fourth Rule 12 motions. *See* Doc. Nos. 2, 10, 13, 19, 20, 21. The
7 factual background set forth in the Court’s Order on Defendant’s Motion to Dismiss the
8 First Amended Complaint, *see* Doc. No. 9 (“First Dismissal Order”), and Order on
9 Defendant’s Motion to Dismiss the Second Amended Complaint, *see* Doc. No. 18
10 (“Second Dismissal Order”), remains virtually unchanged. The Court incorporates both
11 prior Dismissal Orders by reference here and provides the following abbreviated
12 summary.

13 The CDCR provides medical, dental, and mental health services to its prison
14 inmates through the California Correctional Health Care Services (“CCHCS”). TAC ¶ 9.
15 On May 10, 2013, Plaintiff began working for CCHCS as an Office Technician at the
16 Richard J. Donovan Correctional Facility. *Id.* ¶ 10. Plaintiff later worked as an Office
17 Services Supervisor II until he transferred to CalTrans on December 20, 2019, severing
18 his employment with the CDCR. *Id.*; *see also id.* ¶ 33.

19 Generally speaking, Plaintiff alleges that he was not promoted to a position he
20 applied for in November 2019 in retaliation for filing a grievance with respect to
21 numerous earlier instances wherein the CDCR failed to promote him, which Plaintiff
22 perceived as being due to sex discrimination. *See id.* ¶ 11, 26, 29. As a result, Plaintiff
23 asserts one claim against the CDCR for unlawful retaliation in violation of Title VII of
24 the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a). *Id.* at 8.²

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27 ¹ Because this matter is before the Court on a motion to dismiss, the Court must accept as true the
28 allegations set forth in the Complaint. *See Hosp. Bldg. Co. v. Trs. of Rex Hosp.*, 425 U.S. 738, 740
(1976).

² Citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

II. LEGAL STANDARDS

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2 A Rule 12(b)(6)³ motion tests the legal sufficiency of the claims made in a
3 complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must
4 contain “a short and plain statement of the claim showing that the pleader is entitled to
5 relief” Fed. R. Civ. P. 8(a)(2). However, plaintiffs must also plead “enough facts to
6 state a claim to relief that is plausible on its face.” Fed. R. Civ. P. 12(b)(6); *Bell Atl.*
7 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard demands more
8 than “a formulaic recitation of the elements of a cause of action,” or “naked assertions
9 devoid of further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
10 (internal quotation marks omitted). Instead, the complaint “must contain allegations of
11 underlying facts sufficient to give fair notice and to enable the opposing party to defend
12 itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). In reviewing a
13 motion to dismiss under Rule 12(b)(6), courts must assume the truth of all factual
14 allegations and must construe them in the light most favorable to the nonmoving party.
15 *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). The court need
16 not take legal conclusions as true merely because they are cast in the form of factual
17 allegations. *See Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). Similarly,
18 “conclusory allegations of law and unwarranted inferences are not sufficient to defeat a
19 motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). Where dismissal
20 is appropriate, a court should grant leave to amend unless the plaintiff could not possibly
21 cure the defects in the pleading. *See Knappenberger v. City of Phoenix*, 566 F.3d 936,
22 942 (9th Cir. 2009) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)).

23 Additionally, “[t]he Court may strike from a pleading . . . any redundant,
24 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). For the purposes
25 of this rule, “[i]mmaterial’ matter is that which has no essential or important relationship
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28 ³ Unless otherwise noted, all “Rule” references are to the Federal Rules of Civil Procedure.

1 to the claim for relief or the defenses being pleaded.” *Fantasy, Inc. v. Fogerty*, 984 F.2d
2 1524, 1527 (9th Cir. 1993) (quoting 5 Charles A. Wright & Arthur R. Miller, Federal
3 Practice and Procedure § 1382, at 706-07 (1990)), *rev’d on other grounds by Fogerty v.*
4 *Fantasy, Inc.*, 510 U.S. 517 (1994); *see also Whittlestone, Inc. v. Handi-Craft Co.*, 618
5 F.3d 970, 974 (9th Cir. 2010). “‘Impertinent’ matter consists of statements that do not
6 pertain, and are not necessary, to the issues in question.” *Fantasy, Inc.*, 984 F.2d at 1527
7 (quoting 5 Charles A. Wright & Arthur R. Miller, at 711); *see also Whittlestone, Inc.*, 618
8 F.3d at 974.

9 The purpose of a Rule 12(f) motion is “to avoid the expenditure of time and money
10 that must arise from litigating spurious issues by dispensing with those issues prior to
11 trial.” *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). “Motions
12 to strike are generally disfavored, unless ‘it is clear that the matter to be stricken could
13 have no possible bearing on the subject matter of the litigation.’” *Haghayeghi v. Guess?*,
14 *Inc.*, No. 14-cv-00020 JAH-NLS, 2015 U.S. Dist. LEXIS 43243, at *11–12 (S.D. Cal.
15 Mar. 24, 2015) (quoting *LeDuc v. Kentucky Cent. Life Ins. Co.*, 814 F. Supp. 820, 830
16 (N.D. Cal. 1992)); *see also Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013, 1037 (C.D.
17 Cal. 1998)).

18 In ruling on a motion to strike, the Court may only consider the face of the
19 pleading or matters subject to judicial notice. *See Fantasy, Inc.*, 984 F.2d at 1528. “With
20 a motion to strike, just as with a motion to dismiss, the court should view the pleading in
21 the light most favorable to the nonmoving party.” *Snap! Mobile, Inc. v. Croghan*, No.
22 18-cv-04686-LHK, 2019 U.S. Dist. LEXIS 28759, at *9 (N.D. Cal. Feb. 22, 2019)
23 (quoting *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D. Cal.
24 2004)). Ultimately, the decision about whether to strike allegations is a matter within the
25 district court’s discretion. *Cal. Dep’t of Toxic Substances Control v. Alco Pac., Inc.*, 217
26 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002) (citing *Fantasy, Inc.*, 984 F.2d at 1528); *see also*
27 *Whittlestone, Inc.*, 618 F.3d at 974 (quoting *Nurse v. United States*, 226 F.3d 996, 1000
28 (9th Cir. 2000)).

1 **III. DISCUSSION**

2 As an initial matter, Defendant moves to dismiss Plaintiff’s request for punitive
3 damages. *See* Doc. No. 21-1 at 3. Here, while Plaintiff’s prayer for relief includes a
4 request for punitive damages, *see* TAC at 9, he does not oppose Defendant’s motion to
5 dismiss. *See* Doc. No. 24. In any event, the CDCR is a government agency and Title VII
6 expressly bars an award of punitive damages against a government agency. 42 U.S.C.
7 § 1981a(b)(1); *Kolstad v. Am. Dental Ass’n*, 527 U.S. 526, 534 (1999). Accordingly, the
8 Court **GRANTS** Defendant’s motion and **DISMISSES** Plaintiff’s request for punitive
9 damages.

10 Turning to Defendant’s motion to strike, Defendant challenges either portions or
11 the entirety of twenty-four (24) paragraphs in Plaintiff’s Third Amended Complaint. *See*
12 Doc. No. 20 at 2–6; *see also* Doc. No. 20-1 at 10–14. Defendant contends that these
13 allegations are both immaterial and impertinent for a variety of reasons. *See id.* at 14–17.

14 Before turning to the propriety of the allegations and Defendant’s challenges, the
15 Court begins with an overview of the posture of this case. Plaintiff initiated this action in
16 the San Diego County Superior Court on March 7, 2021. *See* St. Ct. Case No. 37-2022-
17 00008426. On April 4, 2022, Plaintiff filed a First Amended Complaint in state court.
18 *See* Doc. No. 1-2 at 3–10. By way of the First Amended Complaint, Plaintiff asserted
19 one claim for sex discrimination in violation of Title VII of the Civil Rights Act of 1964,
20 42 U.S.C. § 20000e-2(a). *See id.* In May 2022, Defendant removed the action to this
21 Court. *See* Doc. No. 1.

22 In the First Dismissal Order, the Court found that based upon Plaintiff’s March 20,
23 2020 EEOC Complaint, Plaintiff’s only timely discriminatory act was the November
24 2019 allegation that he was not selected for an unidentified SSA/AGPA position. Doc.
25 No. 9 at 9. Accordingly, while the Court dismissed Plaintiff’s claim to the extent it was
26 based upon the untimely acts, the Court nevertheless held that these instances may be
27 used as evidence to the extent they are relevant to and support a viable claim. *See id.*
28 The Court also found that, to the extent Plaintiff sought to assert a constructive discharge

1 claim, the Court lacked jurisdiction because it was not reasonably related to the EEOC
2 Complaint. *Id.* at 10–11. In the First Dismissal Order, the Court included a lengthy
3 footnote identifying a related issue with the First Amended Complaint that was not
4 briefed: Plaintiff’s EEOC Complaint charged retaliation and yet Plaintiff’s sole claim was
5 for sex discrimination. *See id.* at 12 fn.5. Nonetheless, the Court declined to sua sponte
6 address and rule on the issue. *Id.* As to the plausibility of Plaintiff’s sex discrimination
7 claim, the Court found that Plaintiff just narrowly failed to survive dismissal. *See id.* at
8 14. Accordingly, for these reasons, the Court dismissed Plaintiff’s claim with leave to
9 amend.

10 On September 30, 2022, Plaintiff filed a Second Amended Complaint, again
11 asserting only one claim for sex discrimination. *See* Doc. No. 10. Defendant moved to
12 dismiss, mainly arguing the issue identified by the Court in the First Dismissal Order
13 footnote: whether Plaintiff’s EEOC retaliation charge served to duly exhaust his claim for
14 sex discrimination. *See* Doc. No. 18 at 5. However, the matter was left for another day
15 as it was unclear from Plaintiff’s opposition what claim(s) he sought to pursue. *See id.* at
16 6. Accordingly, the Court again dismissed Plaintiff’s claim with leave to amend.

17 Plaintiff has now filed the Third Amended Complaint, electing to pursue only a
18 claim for retaliation in violation of Title VII. *See* TAC. Defendant does not challenge
19 the plausibility of Plaintiff’s claim, nor does Defendant argue any procedural or
20 jurisdictional defect. Rather, Defendant seeks to have the Court strike Plaintiff’s
21 allegations related to sex discrimination and constructive termination that remain in the
22 pleading. *See generally* Doc. No. 20-1. In opposition, Plaintiff generally argues that the
23 prior alleged acts of discrimination are relevant because if they are believed, “it becomes
24 more likely the trier of fact will see those acts as part of Defendant’s motive to retaliate
25 against Plaintiff for filing his [EEOC] complaint.” Doc. No. 23 at 4.

26 Title VII makes it unlawful for, among other things, “an employer to discriminate
27 against any of his employees . . . because he has opposed any . . . unlawful employment
28 practice [under] this title.” 42 U.S.C.S. § 2000e-3. To make out a prima facie case of

1 retaliation under Title VII, a plaintiff must establish that: (1) he undertook a protected
2 activity under Title VII; (2) his employer subjected him to an adverse employment
3 action; and (3) a causal link between those two events. *See Vasquez v. Cty. of L.A.*, 349
4 F.3d 634, 646 (9th Cir. 2003).

5 Here, Plaintiff's asserted protected activity is his May 11, 2018 Merit Issue
6 Grievance. *See* TAC ¶ 26. According to Plaintiff, he complained that Defendant
7 discriminated against him because he is a male by failing to promote him on numerous
8 instances and that Defendant's screening criteria was unfair and disparately applied to
9 him as a male. *See id.* ¶ 25. Thereafter, in November 2019, Plaintiff applied for an
10 SSA/AGPA position, but he was ultimately not selected. *See id.* ¶ 29. This is Plaintiff's
11 identified and only timely adverse action. Plaintiff contends that he suffered this adverse
12 action in retaliation for his grievance, *see id.* ¶ 31, and his position is factually supported,
13 *see id.* ¶¶ 30, 30*, 31*.⁴

14 Plaintiff need not prove that the underlying conduct was unlawful, rather, he need
15 only demonstrate that he had a reasonable, good faith belief that the conduct he protested
16 was prohibited by Title VII. *See Trent v. Valley Elec. Ass'n*, 41 F.3d 524, 526 (9th Cir.
17 1994). To that end, a review of the challenged allegations reveals that some are related to
18 whether Plaintiff held a good faith belief that it was unlawful for Defendant to repeatedly
19 deny him promotions due to his sex. *See id.* at 527. Some of the challenged allegations
20 could also conceivably bear on the causal link between Plaintiff's grievance and the
21 adverse action. Additionally, some of Plaintiff's allegations may be used for background
22 purposes to support his now-viable retaliation claim. *See AMTRAK v. Morgan*, 536 U.S.
23 101, 113 (2002) ("Nor does the statute bar an employee from using the prior [untimely]
24 acts as background evidence in support of a timely claim.").

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27 ⁴ As Defendant notes, Plaintiff's Third Amended Complaint inadvertently includes two sets of different
28 allegations numbered as 30, 31, 32, and 33. *Compare* TAC at 6, *with id.* at 7. The paragraphs denoted
with an * refer to the second set of allegations, found on page 7 of the Third Amended Complaint.

1 However, some of the challenged allegations are plainly immaterial and
2 impertinent to the case at this juncture because Plaintiff has not asserted claims for sex
3 discrimination and constructive discharge. Keeping in mind that motions to strike
4 “should not be granted unless it is clear that the matter to be stricken could have no
5 possible bearing on the subject matter of the litigation,” *Colaprico v. Sun Microsystems,*
6 *Inc.*, 758 F.Supp. 1335, 1339 (N.D. Cal. 1991), and the Court “must hesitate before
7 striking material from a litigant’s pleadings,” *Gallegos v. Roman Catholic Archbishop of*
8 *S.F.*, No. 16-cv-01588-LB, 2016 U.S. Dist. LEXIS 74207, at *11–12 (N.D. Cal. June 7,
9 2016), the Court **GRANTS IN PART** Defendant’s motion and **STRIKES** the following:

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11 1. . . . which had the purpose or effect of discriminating against Plaintiff based
12 on his sex

13 10. . . . at which time his employment was unceremoniously severed.

14 11. Mr. Luciano’s employment separation resulted from employment
15 discrimination [] based on his sex. Specifically, Mr. Luciano is informed and believes, and
16 based thereon alleges that the adverse employment actions he suffered resulted because of
17 his sex

18 31. . . . and/or because Plaintiff was a male employee.

19 32*. Having been subjected to Defendant’s sex discrimination . . . Plaintiff had no
20 other option remaining but to sever his employment.

21 33*. . . . Plaintiff’s employment was separated

22 34. During his tenure Plaintiff witnessed and was the victim of persistent
23 discrimination on the basis of gender

24 35. . . . Plaintiff asserts this action was clearly meant to deny him and similarly
25 situated males answers as to why they were not promoted while lessor qualified females
26 were accepted or positions were left vacant rather hire or promote a qualified male.

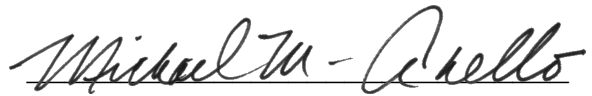
27 42. . . . as well as the fact that he was male.
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1 **IV. CONCLUSION**

2 Based upon the foregoing, the Court **GRANTS** Defendant’s motion to dismiss and
3 **GRANTS IN PART** Defendant’s motion to strike. The Court **STRIKES** the allegations
4 identified above. These rulings are without leave to amend. However, the Court
5 **DIRECTS** Plaintiff to a clean version of his pleading, consistent with the foregoing,⁵ on
6 or before **June 23, 2023**. Defendant must then file its answer within the time prescribed
7 by Federal Rule of Civil Procedure 15.

8 **IT IS SO ORDERED.**

9 Dated: June 14, 2023

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11 HON. MICHAEL M. ANELLO
12 United States District Judge

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⁵ Namely, Plaintiff must remove his request for punitive damages as well as the stricken language, and must properly renumber his paragraphs.