

1 JOHN P. McKAY (#43551)  
MICHAEL P. ACAIN (#205109)  
2 McKAY, BYRNE & GRAHAM  
3250 Wilshire Blvd., Suite 603  
3 Los Angeles, CA 90010-1578  
(213)386-6900/Fax:(213)381-1762  
4

Attorneys for Defendants  
5 CALIFORNIA LUTHERAN HIGH SCHOOL  
ASSOCIATION, a California  
6 corporation, and GREGORY R.  
BORK, an individual  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF RIVERSIDE, WESTERN DIVISION**  
10

11 MOTHER DOE and FATHER ROE as  
guardians *ad litem* for JANE DOE  
12 and MARY ROE, minors,  
13  
Plaintiffs,  
14  
v.  
15  
CALIFORNIA LUTHERAN HIGH SCHOOL  
16 ASSOCIATION, a California  
Corporation; GREGORY R. BORK, an  
17 individual; and MOES 1 through  
10, inclusive,  
18  
Defendants.  
19  
20

CASE NO.: RIC 441819  
Judge: Hon. Gloria Connor Trask  
Dept.: 04  
**DEFENDANTS CALIFORNIA HIGH  
SCHOOL ASSOCIATION'S AND BORK'S  
MOTION TO STRIKE PORTIONS OF  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT**  
Date : \_\_\_\_\_, 2006  
Time : \_\_\_\_\_ a.m.  
Department: 04  
Filing Date: April 19, 2005  
Trial Date : None

21  
22 TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:  
23 PLEASE TAKE NOTICE THAT on \_\_\_\_\_, 2006 at \_\_\_\_\_ a.m.  
24 or as soon thereafter as counsel may be heard in Department 04 of  
25 the above-entitled court located at 4050 Main Street, Riverside, CA,  
26 defendants CALIFORNIA LUTHERAN HIGH SCHOOL ASSOCIATION (hereafter  
27 "CLHS") and GREGORY R. BORK (hereafter, collectively, "defendants")  
28 will move this Court for an order striking portions of the First

1 Amended Complaint ("FAC") of plaintiffs MOTHER DOE and FATHER ROE as  
2 Guardians *ad Litem* for JANE DOE and MARY ROE, minors (hereafter,  
3 collectively, "plaintiffs") as follows:

- 4 1. That portion of paragraph 80 contained at p. 15:23 of the  
5 FAC which states "Plaintiffs, therefore, seek an award of  
6 punitive damages" as it relates to defendant CLHS.
- 7 2. That portion of paragraph 88 contained at p.17:4 of the  
8 FAC which states "Plaintiffs, therefore, seek an award of  
9 punitive damages" as it relates to defendant CLHS.
- 10 3. That portion of paragraph 95 contained at p.18:12 of the  
11 FAC which states "...and justify the awarding of punitive  
12 damages" as it relates to defendant CLHS.
- 13 4. Paragraph 6 of the Prayer for relief contained at p. 19:23  
14 of the FAC as it relates to defendant CLHS.
- 15 5. Paragraph 9 of the Prayer for relief contained at p. 19:26  
16 of the FAC.

17  
18 This Motion to Strike is made under the provisions of *Code of*  
19 *Civil Procedure* ("C.C.P.") §§435, 436 and 437 upon the grounds that  
20 the aforementioned paragraphs seek damages which are not recoverable  
21 as a matter of law, making such statements irrelevant and improper  
22 matter inserted into the pleading. This Motion to Strike is based  
23 on this Notice, the attached Memorandum of Points and Authorities,  
24 the pleadings and papers already on file with this Court and on any  
25 other documents and evidence permitted by the Court at the hearing  
26 on this matter.

27 ///

28 ///

1 DATED: March 30, 2006

McKAY, BYRNE & GRAHAM

2

3

By \_\_\_\_\_

4

JOHN P. McKAY  
Attorneys for Defendants  
CALIFORNIA LUTHERAN HIGH  
SCHOOL ASSOCIATION, a  
California corporation, and  
GREGORY R. BORK, an individual

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 I.

4 INTRODUCTION

5 Plaintiffs' FAC generally asserts that defendants, through  
6 their expulsion of JANE DOE and MARY ROE from CALIFORNIA LUTHERAN  
7 HIGH SCHOOL ("CLHS"), engaged in sexual orientation discrimination  
8 in violation of Article I, §1 of the California Constitution and the  
9 Unruh Act (*Civil Code* §51). As defendants are alleged to have  
10 engaged in unlawful and unfair conduct, plaintiffs further allege  
11 that defendants have violated California's Unfair Competition Law,  
12 codified at *Business & Professions Code* §17200, *et seq.* Plaintiffs  
13 also allege that defendants invaded plaintiffs' right of privacy by  
14 publicly disclosing private facts concerning the sexual orientation  
15 of JANE DOE and MARY ROE and falsely imprisoned JANE DOE and MARY  
16 ROE upon questioning them about their relationship. As a result of  
17 this alleged malfeasance, plaintiffs seek general and special  
18 damages along with injunctive and declaratory relief.

19 In addition, plaintiffs seek punitive damages in relation to  
20 their invasion of privacy and false imprisonment claims along with  
21 attorneys fees under various statutes.

22 Defendants vehemently deny that they engaged in any conduct in  
23 violation of existing California statutory and/or case law. Such  
24 issues are addressed in defendants' concurrently filed Demurrer to  
25 the FAC. Defendants object to plaintiffs' request for punitive  
26 damages as against defendant CLHS along with their request for  
27 attorneys fees under *Code of Civil Procedure* §1021.5. Plaintiffs  
28 are not entitled to the claimed damages, rendering such allegations

1 irrelevant and creating unjustified, improper matter inserted into  
2 the operative pleading. This improper, irrelevant matter must thus  
3 be stricken from the First Amended Complaint.

4  
5 **II.**

6 **STATUTORY AUTHORITY**

7 *Code of Civil Procedure* §435(b)(1) states in pertinent  
8 part:

9 Any party, within the time allowed to respond to  
10 a pleading may serve and file a notice of motion  
11 to strike the whole or any part thereof....

12  
13 *Code of Civil Procedure* §436 states in pertinent part:

14 The court may, upon a motion pursuant to Section  
15 435, or at any time in its discretion, and upon  
16 terms it deems proper:

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

19 (b) Strike out all or any part of any pleading  
20 not drawn or filed in conformity with the  
21 laws of this state....

22  
23 *Code of Civil Procedure* §437(a) states in pertinent part:

24 The grounds for a motion to strike shall appear  
25 on the face of the challenged pleading or from  
26 any matter of which the court is required to  
27 take judicial notice.

28 ///

1 A motion to strike can be used to attack claims for damages  
2 that are not supported by the cause of action plead, including  
3 unauthorized punitive damage claims. Weil and Brown, *Civil*  
4 *Procedure Before Trial*, §§7:182, 7:185. As plaintiffs have no legal  
5 basis to support their claims for punitive damages under the Unruh  
6 Act nor for attorneys fees pursuant to statute, such allegations  
7 must be stricken from the First Amended Complaint.

8  
9 **III.**

10 **PLAINTIFFS ARE STATUTORILY PROHIBITED FROM ASSERTING CLAIMS FOR**  
11 **PUNITIVE OR EXEMPLARY DAMAGES AGAINST A RELIGIOUS CORPORATION**

12 *Code of Civil Procedure* §425.14 provides in pertinent part:

13 No claim for punitive or exemplary damages  
14 against a religious...corporation shall be  
15 included in a complaint or other pleading unless  
16 the court enters an order allowing an amended  
17 pleading that includes a claim for punitive or  
18 exemplary damages to be filed.

19  
20 CLHS is a religious entity duly incorporated under the laws of  
21 the State of California. A true and correct copy of the Articles of  
22 Incorporation setting forth the corporate purpose of CLHS is  
23 attached as Exhibit A.

24 Plaintiffs assert they are entitled to punitive damages against  
25 all defendants, including CLHS, with regard to the Third Cause of  
26 Action (Invasion of Privacy), Fourth Cause of Action (Violation of  
27 Constitutional Right to Privacy) and Fifth Cause of Action (False  
28 Imprisonment). Under the express provisions of *C.C.P.* §425.14,

1 claims for punitive or exemplary damages against CLHS cannot be made  
2 absent a court order allowing the filing of an amended pleading. As  
3 of the date of filing this Motion to Strike, no such court order has  
4 been requested by the plaintiffs or granted by the Court. As such,  
5 all claims for punitive or exemplary damages against CLHS are  
6 improper and must be stricken.

7  
8 **V.**

9 **PLAINTIFFS' CLAIM FOR ATTORNEYS FEES PURSUANT TO**  
10 **C.C.P. §1021.5 IS PREMATURE**

11 *Code of Civil Procedure* §1021.5 states in pertinent part:

12 **Upon motion**, a court may award attorney's fees  
13 to a **successful party** again one or more opposing  
14 parties in any action which has resulted in the  
15 enforcement of an important right affecting the  
16 public interest....

17 [Emphasis added.]

18  
19 Under the express language of *Code of Civil Procedure* §1021.5,  
20 the attorneys fees plaintiffs pray for can be awarded only **after**  
21 they have successfully prevailed on all of their claims and only  
22 **after** a formal motion has been filed. Until these prerequisites  
23 have been met, plaintiffs are not entitled to any attorneys fees for  
24 defendants' alleged misfeasance.

25 While plaintiffs' brazen claim for attorneys fees may be viewed  
26 as a gesture of confidence in succeeding on their claims, such  
27 language constitutes irrelevant and improper matter inserted into  
28 the operative pleading. Since there is no legal basis at this time

1 for such prayers for relief, those references must be stricken  
2 pursuant to the authority granted by *Code of Civil*  
3 *Procedure* §436(a).  
4

5 **VI.**

6 **CONCLUSION**

7 For the foregoing reasons, defendants respectfully request that  
8 this Court strike all previously identified portions of the  
9 plaintiffs' First Amended Complaint.  
10

11  
12 DATED: March 30, 2006

Respectfully submitted,

13 McKAY, BYRNE & GRAHAM  
14

15 By \_\_\_\_\_  
16 JOHN P. MCKAY  
17 MICHAEL P. ACAIN  
18 Attorneys for Defendants  
19 CALIFORNIA LUTHERAN HIGH  
20 SCHOOL ASSOCIATION, a  
21 California corporation, and  
22 GREGORY R. BORK, an individual  
23  
24  
25  
26  
27  
28