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JAMES FRANCO; RABBITBANDINI PRODUCTIONS;  
RABBITBANDINI PRODUCTIONS, LLC; RABBITBANDINI  
FILMS, LLC; DARK RABBIT PRODUCTIONS LLC; and  
RABBITBANDINI PRODUCTIONS STUDIO 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

SARAH TITHER-KAPLAN and TONI  
GAAL, on behalf of themselves and all those  
similarly situated,

Plaintiffs,

vs.

JAMES FRANCO; VINCE JOLIVETTE;  
JAY DAVIS; RABBITBANDINI  
PRODUCTIONS; RABBITBANDINI  
PRODUCTIONS, LLC; RABBITBANDINI  
FILMS, LLC; DARK RABBIT  
PRODUCTIONS, LLC; RABBITBANDINI  
PRODUCTIONS STUDIO 4, LLC; and  
DOES 1-10,

Defendants.

Case No: 19STCV35156  
[Assigned to the Honorable Ann I. Jones,  
Dept. SS-11]

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
STRIKE PORTIONS OF  
PLAINTIFFS' COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

[Filed concurrently with Defendants'  
Demurrer and [Proposed] Order]

Date: April 15, 2020  
Time: 10:00 a.m.  
Dept.: SS-11

Complaint Filed: October 3, 2019

<sup>1</sup> The Motion is brought on behalf of Defendants James Franco, Rabbitbandini Productions, Rabbitbandini Productions, LLC, Rabbitbandini Films, LLC, Dark Rabbit Productions, LLC, and Rabbitbandini Productions, LLC, and will be joined by Defendants Vince Jolivet and Jay Davis.

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1           **TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR**  
2           **RESPECTIVE ATTORNEYS OF RECORD:**

3           **PLEASE TAKE NOTICE** that on April 15, 2020, at 10:00 a.m., or as soon thereafter as  
4 the matter may be heard before the Honorable Ann I. Jones in Department 11 of the above-  
5 captioned Court, located at 312 N. Spring Street, Los Angeles, California 90012, Defendants  
6 JAMES FRANCO, RABBITBANDINI PRODUCTIONS, RABBITBANDINI  
7 PRODUCTIONS, LLC, RABBITBANDINI FILMS, LLC, DARK RABBIT PRODUCTIONS,  
8 LLC, and RABBITBANDINI PRODUCTIONS, LLC (together "Defendants") will and hereby  
9 do move, pursuant to California Code of Civil Procedure sections 431.10(b) and (c) and 436, to  
10 strike portions of the Complaint filed by Plaintiffs SARAH TITHER-KAPLAN and TONI  
11 GAAL.

12           Specifically, Defendants seek the strike the following language from the Complaint:

13           1.       **Complaint, Paragraph 161 at page 19, lines 26-27**, which states: "all female  
14 student actors who enrolled in Studio 4..."

15           2.       **Complaint, Paragraph 161 at page 19, lines 27-28**, which states: "...and  
16 expressed interest in Defendants' Master Class and who subsequently either ... did not ..."

17           Defendants' Motion to Strike is made under Code of Civil Procedure section 436 on the  
18 ground that a court may strike out any irrelevant, false, or improper matters contrary to law  
19 inserted unto a pleading, and under Code of Civil Procedure section 431.10 on the ground that  
20 Plaintiffs' class definition for their "Sexual Exploitation Class" is hopelessly vague and  
21 unascertainable by objective means, and is therefore immaterial and irrelevant.

22       \\

23       \\

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26       \\

27       \\

28       \\


03/03/2020

1 This Motion to Strike is based upon this notice and attached memorandum of points and  
2 authorities, the complete records and file herein, and upon such other arguments as may be  
3 presented at the hearing on this Motion to Strike.

4  
5 Dated: February 28, 2020

GORDON REES SCULLY MANSUKHANI, LLP

6  
7 By:

  
Debra Ellwood Meppen  
Laurie DeYoung  
Gene F. Williams  
Attorneys for Defendants  
JAMES FRANCO;  
RABBITBANDINI  
PRODUCTIONS;  
RABBITBANDINI  
PRODUCTIONS, LLC;  
RABBITBANDINI FILMS, LLC;  
DARK RABBIT PRODUCTIONS  
LLC; and RABBITBANDINI  
PRODUCTIONS STUDIO 4

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1 **I. INTRODUCTION**

2 As set forth in the concurrently filed Demurrer, the action filed by Sarah Tither-Kaplan  
3 and Toni Gaal is a shameless attempt to profit off the #MeToo movement by engaging in  
4 character assassination of the Defendants under the guise of a class action lawsuit. As  
5 explained in Defendants' Demurrer, Plaintiffs' claims arise from alleged conduct dating back  
6 over half a decade, and the most salacious of the claims are barred by the applicable statutes of  
7 limitations. In addition, Plaintiffs' "Sexual Exploitation Class" definition is also fatally flawed  
8 because Plaintiffs have defined this class in a way that is entirely subjective and not amenable  
9 to identification by any objective criteria. Rather than defining class members by some  
10 objective measure (having enrolled in a specific class, or attended the school during a certain  
11 period), Plaintiffs define the class as including anyone who "expressed interest in" enrolling in a  
12 particular class. In addition, the definition is overbroad and not limited to class members who  
13 allegedly suffered harm within the statutory period. While issues relating to class definitions are  
14 typically addressed at class certification, courts have granted motions to strike class definitions  
15 where, as here, the definitions are facially improper and not subject to refinement during the  
16 course of discovery. Because Plaintiffs' class definition here is facially improper in a way that is  
17 not subject to clarification or refinement after discovery is conducted, the class itself is  
18 unascertainable, and the class definition must be stricken.

19 **II. ARGUMENT**

20 **A. Legal Standard**

21 Section 436 of the Code of Civil Procedure specifies the grounds for granting a motion to  
22 strike out any irrelevant, false, or improper matter inserted in any pleading. Cal. Civ. Proc. Code  
23 § 436. The Code provides that "[t]he court may, upon a motion made pursuant to Section 435, or  
24 at any time in its discretion, and upon terms it deems proper ... [s]trike out all or any part of any  
25 pleading not drawn or filed in conformity with the laws of this state ..." Cal. Civ. Proc. Code §  
26 436(b). While the court may not strike a portion of a cause of action via a demurrer, "[t]he  
27 appropriate procedural device for challenging a portion of a cause of action...is a motion to  
28 strike." *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4<sup>th</sup> 365, 385.



Where a class definition is not “precise, objective, and presently ascertainable,” it is properly subject to a motion to strike. *See, e.g. Brazil v. Dell, Inc.*, 585 F.Supp.2d 1158, 1167 (N.D. Cal. 2008) (granting motion to strike plaintiff’s class definition where it was not presently ascertainable.); *see also Seegert v. Rexall Sundown, Inc.*, No. 17cv1243-JAH(JLB), 2017 U.S. Dist. LEXIS 198165 at \*\*13 (S.D. Cal. Dec. 1, 2017) (granting motion to strike overbroad class definition); *Grivas v. Metagenics, Inc.* No. SACV 15-01838-CJC (DMFx), 2018 U.S. Dist. LEXIS 227492 at \*19 (C.D. Cal. March 19, 2018) (granting motion to strike class definition that was facially improper as including class members outside the applicable statute of limitations).

**B. Plaintiff’s “Sexual Exploitation Class” Is Improper and Must be Stricken**

The plaintiff in a class action lawsuit bears the burden of properly establishing a class that is “precise,” “objective,” and “presently ascertainable.” *See O’Connor v. Boeing North America, Inc.* 197 F.R.D. 404, 416 (C.D. Cal. 2000). The California Supreme Court, in *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 concluded that a class is “ascertainable when it is defined ‘in terms of objective characteristics and common transactional facts’ that make ‘the ultimate identification of class members possible when the identification becomes necessary.’” *Id.* In addition, the class definition cannot, on its face, include class members who are barred by the applicable statutes of limitations. *See, e.g. Grivas, supra*, 2018 U.S. Dist. LEXIS 227492 at \*19.

Plaintiffs’ “Sexual Exploitation Class” violates both of these requirements. Plaintiffs seek to assert claims on behalf of “all female student actors who enrolled in Studio 4 *and expressed interest in Defendants’ Master Classes* and who *subsequently either participated or did not participate* in these Master Classes.” *See* Complaint at ¶ 161 (emphasis added). The class is not defined “in terms of objective characteristics” but instead by the subjective intent of the putative class members, as determined years later. The term “expressed interest” is hopelessly subjective and impossible to ascertain. To whom must the class members have “expressed interest” to be a member of the class? How much interest must they have expressed? The use of an inherently subjective terms like “who expressed interest” renders the class itself unascertainable. In addition, unlike cases where the class definition suffers from vagueness that may be clarified during the course of investigation and discovery, there is nothing in the

1 discovery in this case that will cure the defect in Plaintiffs' class definition. There is no  
2 document or other evidence available that will objectively identify the putative class members  
3 who "expressed interest" in taking Master Classes because such a term is not susceptible to  
4 objective identification. As a result the class definition must be stricken.

5 In addition to being subjective and ambiguous, the Sexual Exploitation class definition is  
6 also fatally overbroad because it includes individuals whose claims are barred by the applicable  
7 statutes of limitations. As discussed in length in Defendants' concurrently filed Demurrer,  
8 Plaintiffs' causes of action for sex discrimination, sexual harassment, and interference with the  
9 exercise of civil rights, the exact claims relating to the Sexual Exploitation class, are subject to a  
10 two-year statute of limitations. *See W. Shield Investigations & Sec. Consultants v. Sup. Ct.* (82  
11 Cal.App.4<sup>th</sup> 935, 952-953 (holding that plaintiff's Unruh claims for sexual harassment and  
12 interference with civil rights claims, under Civil Code Sections 51.9 and 52.1, respectively,  
13 "constitute[d] a refinement and codification of the existing common law liability for violation of  
14 civil rights" and were therefore governed by the one-year statute of limitations period (which has  
15 subsequently been extended to two years under Code of Civil Procedure Section 335.1.); *see also*  
16 *Gatto v. County of Sonoma* (2002) 98 Cal.App.4<sup>th</sup> 744, 760 (holding that claims for denial of full  
17 and equal access to accommodations under Civil Code Section 51 and interference with civil  
18 rights under Civil Code Section 52 are "subject to the one-year statute" for personal injury  
19 (which has subsequently been increased to two years).)

20 Plaintiffs' Sexual Exploitation class definition is not limited to those students who  
21 suffered alleged discrimination, harassment, and/or exploitation in the two years immediately  
22 preceding the filing of the Complaint.<sup>2</sup> Instead it includes all students who "expressed interest"

23  
24 <sup>2</sup> If Plaintiffs had properly defined the Sexual Exploitation Class as including only those  
25 students who enrolled in the Master Classes in the two years immediately preceding the filing of  
26 the Complaint, there would have likely been *no class members* in the class. This is because, as  
27 Plaintiffs acknowledge in their Complaint, Studio 4 closed in October 2017, almost exactly two  
28 years before Plaintiffs filed their Complaint. At most, the Sexual Exploitation class, properly  
defined, would include only students who were enrolled in a Studio 4 Master Class at the time  
the school closed down. However, even that is unclear, as Plaintiffs do not even allege that there  
were any Master Classes being conducted in October 2017, when the school closed.

1 in any of the Master Classes, from 2014 through October 2017, when the school ultimately  
2 closed. This type of temporal overbreadth is improper and forms a proper basis to strike the  
3 class definition. *See, e.g. Grivas, supra*, 2018 U.S. Dist. LEXIS 227492 at \*19. In *Grivas*, the  
4 plaintiff sought to represent a class of “all persons who at any time through the date of class  
5 certification purchased [defendant’s products].” *Id.* While noting that “[m]otions to strike class  
6 allegations are disfavored because a motion for class certification is a more appropriate vehicle  
7 for arguments about class propriety,” the court ultimately held that:

8           The Court finds that the issue of the temporal span of [Plaintiff’s] putative  
9           class is presently appropriate for adjudication. [Defendant] argues that  
10          [Plaintiff] cannot represent class of individuals who “at any time”  
11          purchased the Class Products. The Court agrees. The statute of limitations  
12          for UCL claims is four years. Therefore, the Court GRANTS IN PART  
13          [Defendant’s] motion to strike with respect to the time component of the  
14          class definition.

12 *Id.* At \*19-20.

13           The same principal applies here. The statute of limitations for Plaintiffs’ Unruh Act  
14          claims is two years. Plaintiffs cannot seek to represent individuals who alleged injuries occurred  
15          more than two years prior to Plaintiffs’ filing their complaint. As a result, the Sexual  
16          Exploitation Class must be stricken. Moreover, Plaintiffs cannot rely on the Discovery Rule to  
17          save the Sexual Exploitation Class definition. As explained in detail in Defendants’ Demurrer,  
18          Plaintiffs failed to allege facts sufficient to warrant the imposition of the Discovery Rule. In  
19          fact, the Complaint illustrates quite the opposite. Plaintiffs allege throughout their Complaint  
20          that they and other putative class members were aware of the alleged misconduct by Defendants,  
21          and even complained about the impropriety of Defendants’ conduct. *See* Demurrer at 12:2-19.  
22          Plaintiffs cannot now reverse course and claim that neither they nor the other putative class  
23          members were aware of the alleged misconduct at the time it was purportedly happening. The  
24          Discovery Rule does not apply to toll the relevant statute of limitations in this case, meaning that  
25          Plaintiffs’ Sexual Exploitation Class is grossly overbroad and must be stricken.

26 **III. CONCLUSION**

27 For the foregoing reasons, Defendants respectfully request that the Court issue an Order striking  
28 the following language from Plaintiffs’ Sexual Exploitation Class definition:



1 (i) Complaint, Paragraph 161 at page 19, lines 26-27, which states: "all female  
2 student actors who enrolled in Studio 4..."

3 (ii) Complaint, Paragraph 161 at page 19, lines 27-28, which states: "...and  
4 expressed interest in Defendants' Master Class and who subsequently either ... did not ..."

5  
6 Dated: February 28, 2020

GORDON REES SCULLY MANSUKHANI, LLP

7  
8 By: 

9 Debra Ellwood Meppen  
10 Laurie DeYoung  
11 Gene F. Williams  
12 Attorneys for Defendants  
13 JAMES FRANCO;  
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17 PRODUCTIONS, LLC;  
18 RABBITBANDINI FILMS, LLC;  
19 DARK RABBIT PRODUCTIONS  
20 LLC; and RABBITBANDINI  
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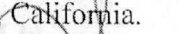


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**DEFENDANTS' NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

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

geles, California.

  
\_\_\_\_\_  
SUSANA M. TELLO

SUSANA M. TELLO

<sup>1</sup> The Motion is brought on behalf of Defendants James Franco, Rabbitbandini Productions, Rabbitbandini Productions, LLC, Rabbitbandini Films, LLC, Dark Rabbit Productions, LLC, and RabbitBandini Productions, LLC, and will be joined by Defendants Vince Jolivette and Jay Davis.