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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

WADE ROBSON, an individual,

Plaintiff,

vs.

MJJ PRODUCTIONS, INC., a California corporation; MJJ VENTURES, INC., a California corporation; and DOES 4-50, inclusive,

Defendants.

Case No.: BC 508502
[Related to civil case BC545264, James Safechuck v. Doe 1, et al., and probate case BP 117321, In re the Estate of Michael Joseph Jackson]
[Both cases assigned to the Honorable Judge Mitchell L. Beckloff, Dept. 51]

PLAINTIFF WADE ROBSON'S OPPOSITION TO DEFENDANTS MJJ PRODUCTIONS, INC. AND MJJ VENTURES, INC.'S DEMURRER TO ROBSON'S THIRD AMENDED COMPLAINT

Hearing Date: June 30, 2015
Time: 8:30 a.m.
Place: Department 51

Trial Date: None Set
Complaint Filed: May 10, 2013

[Filed concurrently with Request for Judicial Notice]

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I. INTRODUCTION

The Demurrer filed by Defendants MJJ Productions, Inc. and MJJ Ventures, Inc. ignores the well-pleaded facts of the Third Amended Complaint ("TAC"), and instead appears to be nothing more than a recycled version of their prior Demurrer to the Second Amended Complaint. Defendants contend that because the action was filed after Plaintiff Wade Robson's 26th birthday, his claims are barred unless he can allege facts sufficient to bring the action within CCP § 340.1(b)(2). They argue that Robson has not done so, thereby rendering his causes of action time-barred (Demurrer 2:27-3:3).

This argument, however, is based on a "selective reading" of the TAC, and is as meritless as the rest of the Demurrer. Not only does the TAC allege more than sufficient ***ultimate*** facts meeting the criteria of CCP § 340.1(b)(2), but it also exceeds the required pleading standard by alleging ***evidentiary*** facts establishing those elements. The Demurrer should be overruled.

II. LEGAL STANDARD

A demurrer serves the limited purpose of testing the "legal sufficiency of a complaint." (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994) The court is required to accept all of the well pleaded allegations in the complaint as true. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal. 4th 992, 998) A demurrer should be sustained only if the complaint "fails to state a cause of action under any possible legal theory." (*Id.*)

A plaintiff's "possible inability or difficulty in proving the allegations of the complaint is of no concern." (*Kerivan v. Title Ins. Trust & Co.* (1983) 147 Cal. App. 3d 225, 229) The court must construe all allegations of the complaint liberally and make all reasonable inferences and implications in favor of the complaint. (*Young v. Gannon* (2002) 97 Cal. App. 4th 209, 220) A demurrer is not "the appropriate procedure for determining the truth of disputed facts or what inferences should be drawn when competing inferences are possible." (*CrossTalk Productions, Inc. v. Jacobson* (1998) 65 Cal. App. 4th 631, 635) Further, "a court will not consider facts which have not been alleged in the complaint unless they may be reasonably inferred from the matters which have been pled or are proper subjects of judicial notice." (*Hall v. Great Western Bank* (1991) 231 Cal.App.3d. 713, fn. 7)

The TAC meets and exceeds those pleading requirements.

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III. ARGUMENT

A. Robson Has Alleged Sufficient Facts To Bring His Claims Within CCP § 340.1(b)(2)

Pursuant to CCP § 340.1(b)(1), an action against a person or entity under CCP §§ 340.1(a)(2) or (3) must be commenced prior to the plaintiff's 26th birthday. Because Robson filed this claim after his 26th birthday, in order for Robson's claims against Defendants under CCP §§ 340.1(a)(2) and (3) to be timely, he is required to allege sufficient facts to meet the three conditions set forth in CCP § 340.1(b)(2): (1) the non-perpetrator defendant "knew or had reason to know, or was otherwise on notice;" (2) that the perpetrator – "an employee, volunteer, representative, or agent" – had engaged in "unlawful sexual conduct;" and (3) that the non-perpetrator defendant "failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment." (CCP § 340.1(b)(2); *Doe v. City of Los Angeles*, (2007) 42 Cal. 4th 531, 545) If such facts are established, then the applicable statute of limitations is that provided for in CCP § 340.1(a), "within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse…" (CCP § 340.1(a))

This extended statute of limitations in CCP § 340.1(b)(2) was enacted by the Legislature "to ensure that victims severely damaged by childhood sexual abuse are able to seek compensation from those responsible. While current law allows a lawsuit to be brought against the perpetrator within three years of discovery of the adulthood aftereffects of the childhood abuse, current law bars any action against a responsible third party entity (such as an employer, sponsoring organization or religious organization) after the victim's 26th birthday…This arbitrary limitation unfairly deprives a victim from seeking redress, and unfairly and unjustifiably protects third parties from being held accountable for their actions that caused injury to victims." (Assem. Floor Analysis of Sen. Bill No. 1779 (2001-2002 Reg. Sess.) as amended June 17, 2002, pp. 3-4)

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As cogently noted by the California Supreme Court in *City of Los Angeles*:

> Clearly, then, the Legislature's goal in enacting subdivision (b)(2) was to expand the ability of victims of childhood abuse to sue those responsible for the injuries they sustained as a result of that abuse. This reading of subdivision (b)(2) is also consistent with the Legislature's larger purpose in enacting section 340.1, the limitations statute of which subdivision (b)(2) is a part. The overall goal of section 340.1 is to allow victims of childhood sexual abuse a longer time period in which to bring suit against their abusers. The legislative history makes this abundantly clear. The statute has been amended numerous times since its enactment in 1986, to enlarge the period for filing claims, to hold molesters accountable for their behavior so that they are not 'off the hook' as soon as their victims reach age 21, and to extend the expanded limitations period to actions not just against molesters, but against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse. Each time, plaintiffs' access to the courts was expanded.

(*City of Los Angeles,* 42 Cal. 4th at 545) (internal quotes and citations omitted)

Robson *has* alleged significantly more than sufficient facts in the TAC to fulfill the three conditions of CCP § 340.1(b)(2). The TAC generally alleges at 3:17-19 that the Defendants are liable for their "knowing failure to take reasonable steps and implement reasonable safeguards to avoid acts of unlawful sexual conduct by [Jackson]…" As to the first two conditions re the non-perpetrator defendant's knowledge and/or notice of the perpetrator's prior acts of abuse:

- ( ) stated that prior to Robson's first being placed in Jackson's custody in or around February 1990 through the efforts of MJJ Productions' Executive Administrator , Mr. had witnessed several suspicious incidents involving Jackson and James Safechuck. Mr. had found Jackson and Safechuck's underwear lying next to Jackson's bed, and seen Jackson and Safechuck hugging each other while bathing together in a Jacuzzi. Mr. also stated that there was gossip around Neverland Ranch that Jackson was "having an affair" with Safechuck and that they were sleeping together. Mr. and his wife had also been told by never to leave children alone in a room with Jackson. (TAC 6:1-9)
- ( ) stated that when took charge of operations at Neverland Ranch, she implemented a new policy whereby ranch security guards were instructed not to stop Jackson's car at the ranch gate (as they had in the past) when Jackson arrived with a young boy. Jackson would sometimes arrive unexpectedly at night with an unidentified boy, and on such occasions security was instructed to vacate the area around the main house so they were not close enough to identify the boy. On one particular occasion when Jackson arrived unexpectedly, Ms. stopped his vehicle and saw a young boy attempting to hide between the two front seats. Ms. then called to inform her that Jackson had arrived, and "flew off the handle" when she heard that Jackson had arrived without her knowledge. (TAC 9:1-27)

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- ( ) stated that was the one who "arranged things with the children and their families," and that would arrange for limousines to take children to Jackson's "Hideout." (TAC 10:24-11:4)
- ( ) stated that she first heard of Jackson's reputation regarding children soon after she started working at MJJ Productions in . told Ms. that she should never leave her son alone with Jackson, and also told Ms. that "that kid [Jackson] better be glad I understand his problem." (TAC 11:5-14)

The allegations in the TAC at 14:11-15:12 regarding the civil lawsuit filed against Jackson by Jordan Chandler in 1993 shows that Defendants indisputably "knew or had reason to know" or "were otherwise on notice" of Jackson's acts of abuse at least as early as 1993, and there is little doubt Defendants had this requisite knowledge or notice much earlier. [1] The TAC alleges that the abuse of Robson continued from 1990 to 1997 (TAC 5:11-13, 12:17-19), and thus Defendants' knowledge of Jackson's past unlawful sexual conduct predates most (if not all) of this period. [2]

Next, with regard to the third condition, a plaintiff is required to sufficiently allege that the non-perpetrator defendants "by virtue of certain specified relationships to the perpetrator (*i.e.*, employee, volunteer, representative, or agent), could have employed safeguards to prevent the sexual assault. It requires the sexual conduct to have arisen through an exploitation of a relationship over which the third party has some control." (*Aaronoff v. Martinez-Senftner* (2006) 136 Cal. App. 4th 910, 921; *City of Los Angeles,* at 543-4 ("The statute's enumeration of the necessary relationship between the non-perpetrator defendant and the perpetrator implies that the former was in a position to exercise some control over the latter."))

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[1] The court in *City of Los Angeles* defined the term "knew" in the statute as having "actual knowledge," and "reason to know" as "knowledge of facts from which a reasonable man of ordinary intelligence or one of the superior intelligence of the actor would either infer the existence of the fact in question or would regard its existence as so highly probable that his conduct would be predicated upon the assumption that the fact did exist." Although the court did not define "otherwise on notice," it noted in its discussion of the legislative history that "[t]he apparent purpose of this language was to prevent a non-perpetrator defendant from disclaiming knowledge of the unlawful sexual conduct of the perpetrator on the grounds that it had not been notified of this conduct through a formal complaint process where the evidence demonstrates that some other form of notice was provided." (*Id.* at 546-548)

[2] Furthermore, in keeping with its characterization of CCP § 340.1(b)(2) as "an expansion of the limitations period, the purpose of which is to expand access to the courts by victims of childhood sexual abuse," the Supreme Court in *City of Los Angeles* overruled the Court of Appeal's holding that the subdivision is a "defense" to the statute of limitations that requires the allegation of "specific facts" of defendants' knowledge or notice. (*City of Los Angeles*, at 549-550) The court held that "[i]t would be inconsistent with this purpose [expanded access to the courts for abuse victims], or with the mandate to broadly construe these provisions, to apply more stringent rules of pleading than those that ordinarily apply. Thus, the complaint ordinarily is sufficient if it alleges *ultimate rather than evidentiary facts*." (*Id.*) (internal citations omitted) The court further reasoned that "we agree with plaintiffs that the doctrine of less particularity may be especially appropriate in this setting. The legislative history of Senate Bill No. 1779 demonstrates the Legislature was particularly sensitive to cases of childhood sexual abuse in which the non-perpetrator defendant concealed from victims of that abuse its knowledge of the perpetrator's past acts of unlawful sexual conduct." (*Id.*)

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Robson *has* pled more than sufficient facts to establish the requisite relationship between Defendants and Jackson. Robson alleges on information and belief that MJJ Productions "was a company established by [Jackson] as his primary business entity and the entity that held most or all of the copyrights to [Jackson's] music and videos. [Robson] is further informed and believes, and thereon alleges, that [Jackson] was the president/owner and a representative/agent of MJJ PRODUCTIONS at all times relevant herein, and that in that capacity, MJJ PRODUCTIONS had the ability to exercise control over [Jackson's] business and personal affairs. [Robson] is further informed and believes, and thereon alleges, that [Jackson], with MJJ PRODUCTIONS' full knowledge, consent, and assistance, exploited this relationship with MJJ PRODUCTIONS to set up, facilitate and arrange meetings and encounters between [Jackson] and [Robson] for the purpose of [Jackson's] engaging in childhood sexual abuse of [Robson]." (TAC 2:15-26) The TAC then makes virtually identical allegations regarding MJJ Ventures, with the exception of alleging that "MJJ VENTURES was a company established by [Jackson] in part for the purpose of employing [Robson] to work with [Jackson] on various projects…" (TAC 3:1-10)

The TAC then specifically alleges numerous facts demonstrating that Defendants exerted a significant degree of control over Jackson: and both stated that was the one who was "in charge" at Neverland Ranch, and that had the authority to set security protocol with respect to Jackson's visitors to the ranch (TAC 9:1-18, 11:1); stated that had forced Jackson to agree to Ms. termination against Jackson's wishes (TAC 10:15-20); and ( ) stated that would terminate any ranch employee who got close to Jackson or anyone close to Jackson. (TAC 11:21-26) The TAC also alleges how Robson was lured into Jackson's world through Jackson's relationship with Defendants, and how this relationship subsequently provided Jackson with virtually unfettered access to Robson:

- In November 1987, Robson won a competition in Australia run by Defendant MJJ Productions, the prize for which was a meet-and-greet with Jackson (TAC 4:8-13)
- arranged a meeting between Jackson and Robson in February 1990, which was immediately followed by Robson's first visit to Neverland Ranch, when Jackson's first acts of abuse of Robson occurred (TAC 4:18-5:13)

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- Defendants arranged for Robson and his mother to travel to California on two occasions between February 1990 and September 1991, and paid for Robson's mother to stay at a Holiday Inn directly across the street from Jackson's "Hideout." Jackson abused Robson on a nightly basis during both of these visits (TAC 7:2-8)
- In May 1990 when Robson and his mother were staying at Neverland Ranch, Robson's mother was restricted by Defendants from seeing him while he was with Jackson, and was also prohibited from sleeping in the main house at the ranch while Robson was staying in Jackson's room. also told Robson's mother that she was not to speak to any employees at the ranch, and reprimanded Ms. and Mr. for speaking to Robson's mother (TAC 7:15-8:1)
- Jackson had Defendants arrange for Robson, his mother, and his sister to immigrate to the United States permanently in September 1991, and secure work visas and employment for both Robson and his mother (TAC 10:1-12)
- In 1993, Robson's mother went to work for a hair and makeup company for which she was paid a salary by Defendants, and Defendants continued to pay her a salary even after she left the position in order to facilitate her and Robson's continued stay in the U.S. Defendants employed Robson's mother until approximately 1998, when she, Robson and Robson's sister obtained permanent resident status in the United States, and Jackson's abuse of Robson finally ended. (TAC 12:1-8)

Thus, the TAC clearly alleges a relationship between Jackson and Defendants which falls squarely within the parameters of CCP § 340.1(b)(2): Defendants had knowledge and/or notice of Jackson's prior acts of abuse before Robson was first placed in Jackson's custody; Defendants and Jackson had a relationship over which Defendants were able to exercise at least ***some*** control; and Jackson's abuse of Robson arose from his exploitation of this relationship with Defendants.

B. <u>Defendants' Purported "Three Reasons" Why The TAC Fails To Meet The Elements Of CCP § 340.1(b)(2) Are Meritless</u>

Defendants contend that the TAC fails to fulfill the requirements of CCP § 340.1(b)(2) because Robson was not exposed to Jackson as an "inherent part" of the environment created by the relationship between Jackson and Defendants (Demurrer 9:24-10:21); Defendants were not in a position to control Jackson and stop the alleged abuse (Demurrer 11:22-14:11); and Defendants did not know, have reason to know, or were otherwise on notice of Jackson's unlawful sexual abuse. (Demurrer 14:12-15:24) But Defendants base these purported "reasons" on an entirely selective and distorted view of the facts actually alleged in the TAC, and a misapplication of the law.

1. <u>Jackson's Sexual Abuse Arose Through His Relationship With Defendants</u>

As to the <u>first</u> of these "reasons," Defendants erroneously claim that Jackson's sexual abuse of Robson did not arise through Jackson's employment by or relationship with the Defendants, and that

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the sexual abuse "predated Robson's employment" with the Defendants "by years." Defendants further argue that "when the Corporate Defendants enter the picture, according to the Third Amended Complaint, they are not doing anything." (Demurrer 11:6-10)

That completely ignores what the TAC actually alleges, and Defendants have again misstated and/or omitted many of the facts actually alleged by Robson with respect to the circumstances under which the abuse occurred and Defendants' conduct in relation thereto.

Robson alleges in the TAC that he was first introduced to Jackson in November 1987 through a dance competition run by MJJ Productions. (TAC 4:8-13) Robson was first abused by Jackson during a visit to Neverland Ranch in February 1990. This visit took place immediately after arranged a meeting between Robson and Jackson. (TAC 4:18-5:13) After returning to Australia, Robson's mother remained in regular contact with , who then arranged for Robson and his mother to come to California on two more occasions during the period February 1990 and September 1991. During these visits, Defendants paid for Mrs. Robson to stay at a hotel directly across the street from Jackson's apartment. (TAC 7:2-8) While Robson and his mother were staying at Neverland Ranch on one of these trips, forbade Mrs. Robson from seeing Robson while he was with Jackson, prohibited her from sleeping in the same house as Jackson and Robson, and instructed ranch employees not to speak to her. (TAC 7:15-8:1) Defendants then arranged for Robson and his family to immigrate to the United States in September 1991 and obtain employment with or through Defendants. (TAC 10:1-12) In order to facilitate the Robsons' immigration and continued stay in the United States, Defendants continued paying Robson's mother a salary until 1998, which was approximately the same time that Jackson's sexual abuse of Robson ceased. (TAC 12:1-8, 17-21)

The TAC shows that Defendants played an active role in arranging and facilitating Jackson's sexual abuse of Robson from the outset, and continuing for years thereafter. Defendants' argument that they were "not doing anything" is false. Even the early episodes of abuse were orchestrated by Defendants, and the vast majority of the abuse took place *after* Robson and his mother became employees of Defendants in or about September 1991. Indeed, as the TAC alleges, it was through the very actions of Defendants that Robson's presence in the United States and accessibility to Jackson was accomplished in the first instance, and then maintained for years after.

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Defendants' attempt to draw an analogy between the factual circumstances of Robson's abuse and those found in *Aaronoff* is entirely misguided. (Demurrer 10:14-11:2) In *Aaronoff*, the plaintiff alleged she had been sexually abused by her father, and brought claims against her mother as a non-perpetrator defendant under CCP § 340.1(a)(2) for aiding and abetting the abuse. (*Id.* at 915-916) Because she brought the action after her 26th birthday, the plaintiff had to fulfill the requirements of CCP § 340.1(b)(2) in order for the claims against her mother to be timely. (*Id.*) Plaintiff asserted that because she had been working at her parents' car dealerships when a number of the acts of abuse had occurred, her mother was liable within the meaning of subdivision (b)(2) because she knew of the father's prior acts of abuse; and as an officer and employee of the car dealerships, her mother was obligated to implement safeguards to protect her daughter from her husband. (*Id.* at 917)

The Court of Appeal disagreed, finding that "[t]he alleged sexual abuse arose out of the ***parental relationship*** between [the father] and the plaintiff" and the abuse "was not a product of the parties' relationship with the business entities" (*Id.* at 914); and "[t]he language of section 340.1, subdivision (b)(2) clearly does not apply to the ***parental relationship***. (*Id.* at 921) (emphasis added)

The facts and circumstances of Robson's abuse bear no resemblance to those in *Aaronoff,* which involved a parental relationship. But Robson's allegations of abuse do arise from the exact type of scenario which the *Aaronoff* court stated was envisioned by the statute; namely, that "the child must be exposed to the perpetrator as an inherent part of the environment created by the relationship between the perpetrator and the third party, in this case a ***business environment***." (*Id.* at 921) (emphasis added) As alleged in the TAC, it was Jackson's business relationship with Defendants which first brought Robson into Jackson's orbit, and this ongoing relationship paved the way for and facilitated the years of abuse which followed. Thus, contrary to Defendants' argument, the *Aaronoff* decision supports Robson's position that his claims fall squarely within those contemplated by CCP § 340.1(b)(2).

2. <u>Defendants Were In A Position To Control Jackson And Failed To Do So</u>

Regarding the second of the "reasons" argued by Defendants, that the TAC fails because Robson has not sufficiently alleged that they were in a position to control Jackson and stop the

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alleged abuse, Defendants again rely on complete misstatements and omissions of the allegations in the TAC in making that argument. (*See* Demurrer at 11:27-13:5)

As detailed above, the TAC alleges that Defendants exerted a significant degree of control over Jackson, primarily through .[3] was both the and Jackson's , and was . (TAC 4:19-21, 9:1) In that capacity, she had the authority to terminate employees who got too close to Jackson, and she did terminate them against Jackson's wishes. (TAC 9:1, 10:15-20, 11:21-26) implemented a security protocol at Neverland Ranch which allowed Jackson to arrive surreptitiously with young boys, and she arranged for boys (including Robson) to visit Jackson at his "Hideout." (TAC 9:2-18, 10:26-11:1) arranged to have Robson's mother kept apart from Robson during their stay at the ranch while Robson was being abused, and almost certainly instructed Mr. to drive Jackson and Robson to Santa Barbara, during which trip Mr. witnessed Jackson fondling Robson. (TAC 5:18-26, 7:12-8:28) These allegations demonstrate that wielded a great deal of influence over Jackson's business and personal affairs, and was "in a position to control Jackson and stop the alleged abuse."

Defendants also attempt to argue that the allegations in TAC show that Jackson was the "sole shareholder" of Defendants, and because of this he had "absolute control" over Defendants. (Demurrer 12:3-11) This argument fails for several reasons. First, although the TAC alleges ***on information and belief*** that Jackson was the "president/owner" of Defendants (TAC 2:18-20, 3:4-5), ***nowhere*** is it alleged that Jackson was the "sole shareholder" or that there was "no other" officer, director or other owner as Defendants contend. Defendants are inserting facts into their Demurrer that are not pled in the TAC, which is improper in a demurrer unless those facts can reasonably be inferred from the allegations in the complaint. (*Hall*, 231 Cal.App.3d at fn.7) They cannot.

There is no reasonable inference to be drawn from the allegation that because Jackson was the "president/owner" he was also the sole shareholder, or that he had "absolute control" over Defendants. Defendants conveniently ignore the totality of the allegations in the TAC. For example,

[3] Defendants' characterization of as an "alleged employee of MJJ Productions" (Demurrer 12:17) directly contradicts their First Amended Responses to Robson's Special Interrogatories Nos. 3 and 4, wherein they unequivocally admit that " was employed by MJJ Productions, Inc." (*See* Robson's Request for Judicial Notice filed concurrently herewith, Exhibit A.)

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the TAC also alleges that others played important roles with Defendants, including , and (TAC 11:5-7), and they, based on their conduct, were able to and did exercise some level of control over Defendants. In addition, the TAC alleges that Jackson was a "representative/agent of [Defendant] at all times relevant herein, and in that capacity, [Defendant] had the ability to exercise control over [Jackson's] personal and business affairs." (TAC 2:20-22, 3:5-7) Thus, the allegations of the TAC clearly contradict any inference that Jackson had "absolute control" over Defendants, and Defendants' attempt to have the Court draw such an inference is inappropriate at the demurrer stage. (*CrossTalk,* 65 Cal. App. 4th at 635)

Furthermore, Defendants misapprehend what the law says regarding the term "control"--as previously discussed, the court in *Aaronoff* stated that subdivision (b)(2) "requires the sexual conduct to have arisen through an exploitation of a relationship over which the third party has ***some*** control." (*Id.* at 921) (emphasis added) The court then listed several types of relationships which, among others, would provide the requisite control: "the perpetrator's employment with, representation of, agency to, etc., the third party…" (*Id.*) Thus, given the court's use of the qualifying word "some" and its enumeration of a non-exclusive list of relationships, it is quite apparent that the court did not mean "control" in the "hornbook corporate law" sense as Defendants contend. (Demurrer 12:1-11) Rather, it was referring to "some" ability to "take steps and implement safeguards to avoid future abuse." (*Id.* at 921-922) The TAC alleges numerous facts showing precisely that Defendants had such ability. Indeed, as discussed above, the TAC clearly demonstrates that Defendants (through and potentially others) exerted significant control over Jackson in terms of their ability to make decisions in connection with the placement and handling of Robson and other children in Jackson's custody and employ, as well as in other respects. Additionally, "[w]here the evidence necessary to establish a fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim." (*Morris v. Williams* (1967) 67 Cal. 2d 733, 760) Here, Defendants' corporate structure peculiarly lies within their knowledge, and thus the burden is on Defendants, not Robson, to "go forward with the evidence on the issue." The corporate structure, chain of command and precise scope and nature of the responsibilities of those persons who could exercise "some control" over

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Jackson (which is the proper standard) is information that will be developed in discovery in this case, and does not need to be alleged at this stage of the proceedings. But as alleged in the TAC, Robson has met the necessary pleading threshold required to maintain his causes of action.

Additionally, this showing of control on the part of Defendants is not affected by the allegations in the TAC stating that Jackson directed Defendants to do certain things on his behalf, such as instructing Defendants to hire Robson and his mother. (TAC 10:1-3) Defendants' actions with respect to Robson were performed at Jackson's behest – this is the "exploitation" of the relationship described by the court in *Aaronoff*. (*Id.* at 921) However, this does not change the fact that Defendants had the ability to protect Robson from Jackson, but failed to do so.

Defendants are also incorrect in their assertion that Robson is arguing that Defendants are vicariously liable for Jackson's acts. (Demurrer 13:14-14) As the Legislature explained when it enacted subdivision (b)(2) in 2002, the type of liability envisioned in the statute arises "separate[ly] from *respondeat superior* liability," and occurs "when an employer with knowledge of prior acts of abuse…fails to take reasonable measures to prevent future acts." (Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1779 (2001-2002 Reg. Sess.) as amended May 2, 2002, p. 4) As such, Robson has alleged facts squarely in line with the Legislature's theory of liability in enacting subdivision (b)(2), which is entirely distinct from that of *respondeat superior*.[4]

The requirement under *Aaronoff* is that Defendants have "some" control over Jackson, and Robson has more than surpassed this pleading threshold in the TAC.

3. <u>Defendants Knew Or Should Have Known About Jackson's Sexual Abuse</u>

Finally, as to the <u>third</u> purported "reason," that Defendants lacked awareness of Jackson's unlawful sexual abuse and had no reason to be aware of the sexual abuse, this claim is equally groundless. Defendants attempt to rely on the holding in *City of Los Angeles* to support its contention that Robson has failed to adequately plead the "knowledge" element of subdivision (b)(2). (Demurrer 14:12-15:24) That reliance is misplaced.

[4] The rule of *respondeat superior* is that "an employer is vicariously liable for the torts of its employees committed within the scope of the employment." (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal. 4th 291, 296-297) This is entirely distinguishable from the type of liability foreseen in subdivision (b)(2), as acts of childhood sexual abuse clearly never occur within "the scope of employment." Indeed, to equate subdivision (b)(2) with common law vicarious liability would strip the statute of all meaning and purpose.

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The court in *City of Los Angeles* held that the plaintiffs' allegations regarding defendant LAPD's knowledge and/or notice of the alleged perpetrator's prior acts of abuse were insufficient, and on that basis sustained LAPD's demurrer without leave to amend. Defendants seize upon that holding and try to suggest that Robson's allegations are "nowhere close" to those of the plaintiffs in *City of Los Angeles.* (Demurrer 15:20)

But that is not borne out by even a cursory reading of the TAC. Robson's allegations in the TAC actually far *exceed* those in *City of Los Angeles.* There, plaintiffs alleged nothing specific regarding the LAPD's knowledge of the perpetrator's prior acts apart from generally stating that "other police officers were aware of [perpetrator's] pedophilic tendencies-these are the 'commonly known' allegations-because of his open interest in young boys, the favoritism he showed to certain of the scouts, including plaintiffs, his inappropriate fraternization with some scouts, including plaintiffs, both on the job and at his home, his alleged association with a known pornographer, and his trips to Thailand, where he was observed in the company of a young boy, among other allegations." (*Id.* at 552) The court did not specify who these "other police officers" were or what their positions in the LAPD were alleged to be. The remainder of the allegations had nothing to do with the perpetrator, and merely involved the defendants' purported knowledge of general acts of sexual misconduct in the Explorer Scout program to which plaintiffs belonged. (*Id.* at 551-552)

In contrast, as shown above, Robson has alleged facts demonstrating that Defendants almost certainly had *actual* knowledge of Jackson's abuse through , and "reason to know" as defined by the court in *City of Los Angeles*. (*See infra*.. p. 4, fn. 1, for the court's definition of "reason to know.") Although Defendants' "reason to know" almost certainly pre-dated Jackson's first acts of sexual abuse of Robson in 1990, there can be no question that it existed after the Jordan Chandler lawsuit was filed against Jackson in 1993. Defendants then continued to make Robson available to Jackson for the purposes of sexual abuse ***for another 4 years.*** Robson's factual scenario is far more compelling than that found in *City of Los Angeles*.

Further, as president/owner of Defendants (TAC 2:19-20, 3:4-5), Jackson's actual knowledge of the abuse is imputed by law to the Defendants. (*See Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton, LLP* (2005) 133 Cal. App. 4th 658, 679-80) ("It is settled California law that

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knowledge of an officer of a corporation within the scope of his duties is imputed to the corporation.") (internal quotes omitted) Similarly, the collective knowledge of and other employees of Defendants regarding Jackson's abuse constitutes the knowledge of Defendants. (*See FMC Corp. v. Plaisted & Companies* (1998) 61 Cal. App. 4th 1132, 1212-13) (finding that "[h]ere, all of the people, at whatever level, whose knowledge might have been or become the knowledge of [the corporation]…were as a practical matter subject to the control of the corporation.") This imputation of knowledge to Defendants is distinct from the principles of *respondeat superior* which Defendants erroneously seek to apply to Robson's claims, as that doctrine deals with the assignment of liability to a corporation for an employee's *actions* committed within the scope of employment as opposed to an employee's *knowledge.*

Lastly, as discussed *infra.*, in fn. 2, the court in *City of Los Angeles* stated that subdivision (b)(2) does not require the allegation of "specific" facts to fulfill the knowledge/notice element of the statute, and that "ultimate" facts are sufficient. (*Id.* at 549-550) The court also concluded that the doctrine of "less particularity" is especially appropriate within the context of childhood sexual abuse cases, as the legislative history of subdivision (b)(2) reflects a concern that third-party defendants may attempt to conceal their knowledge of a perpetrator's prior acts of abuse. (*Id.*) This standard of "less particularity" is particularly applicable to Robson's claims, although, as shown above, the TAC far surpasses this threshold by alleging evidentiary facts. Robson has met the knowledge requirement of subdivision (b)(2).

C. Robson's Causes Of Action Are Sufficiently Alleged And Fall Within The Scope Of CCP §§ 340.1(a)(2) And (3)

Robson alleges causes of action against Defendants for negligence, negligent infliction of emotional distress, and breach of fiduciary duty. These causes of action come within the purview of CCP § 340.1(a)(2), which concerns "[a]n action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff."

Defendants argue in passing that "Separate from subdivision (b)(2), we do not agree that the fifth through seventh causes of action sufficiently plead facts to support those causes of action. In

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particular, Robson does not sufficiently allege a 'duty' and 'special relationship' such that the Corporate Defendants had a negligence-based duty to protect him as alleged in his fifth cause of action." (Demurrer 8: fn. 1) But Defendants are wrong that Robson's allegations fulfilling the elements of CCP § 340.1(b)(2) somehow need to be "separate" from those allegations showing a duty of care to Robson on the part of Defendants. They do not.

In enacting CCP § 340.1(b)(2), the Legislature was clearly defining a statutory "duty of care" which arises when an entity has the ability to protect a child from a known perpetrator of childhood sexual abuse over whom the entity exerts some control, yet fails to do so. The California Supreme Court stated in *Quarry v. Doe 1* (2012) 53 Cal. 4th 945 that claims falling under CCP § 340.1(b)(2) are against a "subcategory of third party defendants that already had been defined in section 340.1, subdivision (a)(2) and (3)." (*Id.* at 968) Thus, a third party defendant meeting the criteria of subdivision (b)(2) is *already* considered to owe a duty of care to a plaintiff under subdivision (a)(2). Accordingly, a plaintiff need only allege facts consistent with the language of subdivision (b)(2) to establish a duty of care on the part of a third party defendant, which Robson has done. There is no need for "separate" allegations of a duty and a "special relationship" as Defendants try to create.[5]

Finally, Defendants state that Robson's First Cause of Action for Childhood Sexual Abuse "fails for the simplest of reasons: there is no allegation that the Corporate Defendants committed an act of childhood sexual abuse." (Demurrer 6:18-20) Defendants then contend that such a cause of action exists only with respect to direct acts of sexual abuse under CCP § 340.1(a)(1), but not negligent or intentional acts committed by third party defendants under subdivisions (a)(2) and (3). (Demurrer 6:20-7:13) Defendants' sole basis for this sweeping claim is that in enacting subdivisions (a)(2) and (3), the Legislature stated that the sections did not "create a new theory of liability."

[5] Even if subdivision (b)(2) did not create such a statutory duty, Defendants are incorrect that Robson must allege a "special relationship" between him and Defendants. In modern negligence analysis, the "special relationship" doctrine of duty of care has largely been eclipsed by the balancing test of policy factors enumerated by the California Supreme Court in *Rowland v. Christian* (1968) 69 Cal. 2d 108. (*See Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App. 4th 377, 401-411) This multi-element duty assessment is used to determine whether a particular defendant owed a tort duty to a given plaintiff, and the factors include: (1) the foreseeability of harm to the injured party; (2) the degree of certainty that the injured party suffered harm; (3) the closeness of the connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant; and (7), the consequences to the community of imposing a duty to exercise care, with resulting potential liability. (*Juarez*, 81 Cal. App. 4th at 401.) When applied to the facts in Robson's case, these factors clearly weigh heavily in favor of imposing a duty of care on Defendants.

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(Demurrer 6:22-24)

Despite Defendants' contention, it is entirely unclear whether the Legislature intended for subdivisions (a)(2) and (3) to be an independent cause of action, or simply a statute of limitations governing already-existing causes of action. Defendants cite to no further legislative history or case law clarifying this point. However, what ***is*** absolutely clear is that the Legislature intended for these subdivisions to be an "umbrella" category under which all claims of a certain type fall; *i.e.*, claims for negligent or intentional acts by third party defendants that were the legal cause of an act of childhood sexual abuse (which as defined in the statute means any violation of certain enumerated sections of the Penal Code). (*See* CCP §§ 340.1(a)(2), (3) and (e)) In addition, language from relevant cases suggests that the courts do in fact view subdivisions (a)(2) and (3) and (b)(2) as creating a substantive cause of action for childhood sexual abuse. For example, in *Aaronoff*, the court stated that "[t]he amendment revived for the one year period beginning January 1, 2003, any claim permitted to be filed ***under*** subdivision (b)(2)…" (*Id.* at 915) (emphasis added)

However, regardless of whether CCP §§ 340.1(a)(2) and (3) create a specific cause of action for childhood sexual abuse, what ***is*** certain is that Robson's First Cause of Action falls squarely in the scope thereof. It alleges a wide array of negligent and/or intentional acts on the part of Defendants which were a legal cause of the harm suffered by Robson at the hands of Jackson (TAC 4:8-13, 4:18-5:13, 7:2-8, 7:15-8:1, 10:1-12, and 12:1-8), and lists all of Jackson's acts of childhood sexual abuse (*i.e.*, violations of the Penal and Civil Codes) which were a proximate result of Defendants' conduct. (TAC 17:4-23:22) And it sufficiently alleges a duty of care on the part of Defendants by pleading facts consistent with the elements of CCP § 340.1(b)(2) and the *Rowland* factors.

IV. CONCLUSION

All of Robson's causes of action against Defendants have been sufficiently alleged to come

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within the scope of CCP §§ 340.1(a)(2) and (3). Defendants' Demurrer should be overruled in its entirety.

Dated: June 16th, 2015

Respectfully submitted,

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By: _____

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6310 San Vicente Boulevard, Suite 510, Los Angeles, California 90048.

On June 17, 2015 I served the document described as

PLAINTIFF WADE ROBSON'S OPPOSITION TO DEFENDANTS MJJ PRODUCTIONS, INC. AND MJJ VENTURES, INC.'S DEMURRER TO ROBSON'S THIRD AMENDED COMPLAINT

on the interested parties to this action by placing a true copy thereof in a sealed envelope for mailing address as follows

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BY MAIL: I am readily familiar with the firm's practice for the collection and processing of correspondence, pleadings and notices for mailing. Under that practice it is deposited with the United States Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

BY ELECTRONIC MAIL: A true and correct copy of the document was also transmitted by electronic mail as indicated above and no error was reported.

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

Executed June 17, 2015 at Los Angeles, California.

Sidney Summers

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