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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

12 WADE ROBSON, an individual,
13
14 Plaintiff,
15
16 vs.
17 DOE 1, an individual; MJJ PRODUCTIONS,
18 INC., a California corporation; MJJ
19 VENTURES, INC., a California corporation;
20 and DOES 4-50, inclusive,
21 Defendants.

FILED
Superior Court of California
County of Los Angeles

JUN 20 2014

Sherri R. Carter, Executive Officer/Clerk
By Myrna Beltran Deputy
Myrna Beltran

Case No. BC 508502

Assigned the Hon. Mitchell L. Beckloff

**NOTICE OF HEARING ON DEMURRER
AND DEMURRER TO SECOND
AMENDED COMPLAINT BY
DEFENDANTS MJJ PRODUCTIONS,
INC. AND MJJ VENTURES, INC.;
MEMORANDUM OF POINTS AN
AUTHORITIES IN SUPPORT**

Date: October 1, 2014
Time: 8:30 a.m.
Dept: 51

Action Filed: May 10, 2013
Trial Date: Not Set

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TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 1, 2014, at 8:30 a.m. or as soon thereafter as the matter may be heard in Department 51 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, defendants MJJ Productions, Inc., and MJJ Ventures, Inc., will bring on for hearing their demurrer to the Second Amended Complaint filed on February 19, 2014, by plaintiff Wade Robson.

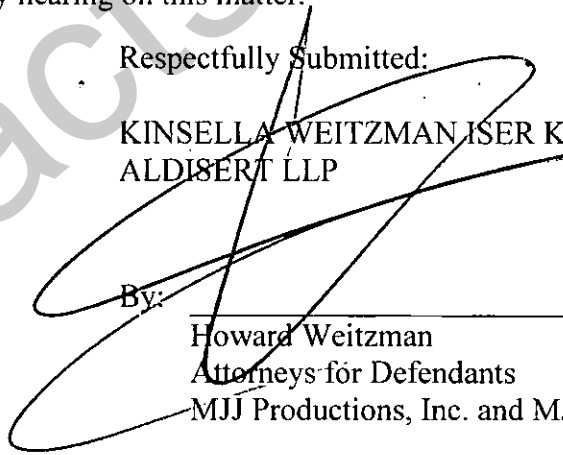
The demurrer will be made pursuant to Code of Civil Procedure § 430.10 on the grounds that Robson's Second Amended Complaint is insufficiently pled because, among other things, it is uncertain and fails to state facts sufficient to constitute timely causes of action against either or both defendants MJJ Productions, Inc., and MJJ Ventures, Inc.

This demurrer is based upon this Notice, the attached Demurrer, the attached Memorandum of Points and Authorities, Robson's Second Amended Complaint, any further briefing on this matter, and on such other and further written and oral argument as may be presented in connection with any hearing on this matter.

DATED: June 20, 2014

Respectfully Submitted:

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP



By:

Howard Weitzman
Attorneys for Defendants
MJJ Productions, Inc. and MJJ Ventures, Inc.

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DEMURRER

Defendants MJJ Productions, Inc., and MJJ Ventures, Inc. (the "Corporate Defendants"), hereby demur to the Second Amended Complaint filed by plaintiff Wade Robson on the following grounds:

The first and only cause of action alleged against the Corporate Defendants for "childhood sexual abuse" does not state facts sufficient to support a timely cause of action against them. Neither Corporate Defendant is a "person" within the meaning of subdivision (a)(1) of Code of Civil Procedure section 340.1 and, therefore, cannot have engaged in an act of "childhood sexual abuse" under that subdivision. Even if Robson had alleged a viable and timely cause of action against the Corporate Defendants coming within the scope of either or both subdivisions (a)(2) or (a)(3) of § 340.1—which he very clearly has not—this action was "filed after the plaintiff's 26th birthday." Code Civ. Proc. § 340.1(b)(1). Accordingly, this action is barred as a matter of law against the Corporate Defendants, unless Robson can allege facts sufficient to bring this action within subdivision (b)(2) of Code of Civil Procedure § 340.1. Not only has Robson not even attempted to allege such facts, he has very clearly alleged facts which are contrary to the requirements of that subdivision. Accordingly, Robson's action against the Corporate Defendants is time-barred as a matter of law and no amendment can cure the defects in the complaint.

WHEREFORE, the Corporate Defendants pray that their demurrers to the Second Amended Complaint be sustained without leave to amend, and that the Court grant such other and further relief as the Court deems just and proper.

DATED: June 20, 2014

Respectfully Submitted:

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

By: _____

Howard Weitzman
Attorneys for Defendants
MJJ Productions, Inc. and MJJ Ventures, Inc.

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7 § 340.1 13

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendants MJJ Productions, Inc., and MJJ Ventures, Inc. (hereafter the "Corporate
4 Defendants") demur to plaintiff Wade Robson's Second Amended Complaint. The Corporate
5 Defendants deny the allegations of that complaint. This demurrer, however, is directed to the law
6 and not to the facts. On the law, Robson's claims are clearly barred.

7 The Corporate Defendants are named as parties in this case for one reason and one reason
8 alone: Michael Jackson is deceased and Robson's claims against his Estate are barred by the
9 creditor's claims statutes, Prob. Code §§ 9000, et seq., and the one-year death statute of
10 limitations, Code Civ. Proc. § 366.2. The Corporate Defendants were owned solely by Michael
11 Jackson until his death, and they are now beneficially owned by Michael's minor children and the
12 other beneficiaries of the Estate of Michael Jackson. Robson alleges that these corporations are
13 liable for the *alleged* sexual abuse of Robson by Michael Jackson. The subject matter of Robson's
14 complaint involves events which allegedly occurred decades ago. Thus, Robson's claims are time-
15 barred unless he can invoke the special, extended statute of limitations for claims involving
16 childhood sexual abuse, section 340.1 of the Code of Civil Procedure (hereafter "section 340.1").

17 As explained below, however, section 340.1 does not permit this type of claim against
18 "entities" (i.e., not "persons") like the Corporate Defendants "after the plaintiff's 26th birthday,"
19 Code Civ. Proc. § 340.1(b)(1), and this action was filed after Robson's 26th birthday. (Second
20 Amended Complaint ("SAC") at ¶¶ 1, 7.) There is one (and only one) exception to the statutory
21 bar on claims against entities after a plaintiff's 26th birthday. *See id.* at § 340.1(b)(2). This
22 exception is applicable only to "third party defendants who, by virtue of certain specified
23 relationships to the perpetrator (i.e., employee, volunteer, representative, or agent), could have
24 employed safeguards to prevent the sexual assault. It requires the sexual conduct to have arisen
25 through an exploitation of a relationship over which the third party has some control." *Aaronoff v.*
26 *Martinez-Senftner*, 136 Cal. App. 4th 910, 921 (2006). Robson does not make such allegations. In
27 fact, he alleges precisely the opposite. Robson's complaint alleges that the Corporate Defendants
28 were controlled by Michael Jackson, not the other way around. Robson repeatedly alleges that

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1 Michael controlled the Corporate Defendants. The Corporate Defendants had no ability to control
2 their sole owner and stockholder, Michael Jackson. Thus, this action is barred as a matter of law.

3 For these reasons, and those set out below, the Corporate Defendants respectfully request
4 that this demurrer be sustained without leave to amend.

5 II. ROBSON'S ALLEGATIONS

6 Robson was born in Australia on September 17, 1982. (SAC at ¶ 7.) Robson alleges that he
7 was molested by "Defendant Doe 1" or "Decedent" when he was a child between 1990 and 1997.

8 Although Robson invoked a fictitious name for "Doe 1," it is clear from the very specific
9 allegations of the operative complaint that "Doe 1" is Michael Jackson. (SAC at ¶¶ 2-4, 7, 28-29.)

10 Apparently, Robson met Michael in Australia in 1987 when Robson entered and won a dance
11 competition allegedly run by Defendant MJJ Productions. (SAC at ¶ 8.)

12 In 1990, Robson's family traveled from Australia to California for a vacation. Robson's
13 mother contacted an assistant of Michael's to set up a visit by Robson and his family to the
14 Neverland Ranch and to Michael's recording studio. (SAC at ¶ 9.) Robson alleges that he was
15 molested by Michael on that 1990 trip. (SAC at ¶¶ 10-15.) Robson returned to Australia with his
16 family after his visit. (SAC at ¶ 13.) Robson allegedly kept in contact with Michael. (SAC at ¶ 16.)

17 In September 1991, Robson, his sister, and his mother all moved to California. (*Ibid.*) Michael
18 allegedly "arranged for his companies Defendants MJJ Productions and MJJ Ventures to hire
19 [Robson] and his mother," and utilized those companies to obtain work visas for Robson and his
20 mother. (SAC at ¶ 17.)

21 Michael was allegedly Robson's mother's supervisor during her alleged employment with
22 one of the Corporate Defendants. Michael apparently directed Robson's mother to arrange visits
23 between Michael and Robson. (SAC at ¶ 19.) There is no allegation that Robson's mother (an
24 alleged employee of the Corporate Defendants) knew about the alleged abuse. (*Ibid.*) At age 11,
25 Robson was signed to Michael's record label. (SAC at ¶ 20.) The alleged abuse supposedly ceased
26 sometime after Robson turned 14 in 1997. (SAC at ¶ 22.)

1 This action was filed on May 8, 2013. Robson turned 18 on September 17, 2000. (SAC at
2 ¶ 7.) At the time this action was filed, Robson was 30 years-old. (SAC at ¶ 1.) When suit was
3 filed, Michael was deceased and had been for almost four years. (SAC at ¶ 2.)

4 Robson's allegations are directly contrary to his own sworn testimony in a 2005 criminal
5 trial where Michael Jackson was vindicated of all wrongdoing by a unanimous jury of twelve.
6 Robson was twenty-three years-old when he testified in 2005. He was subjected to vigorous and
7 repeated cross-examination by the assistant District Attorney handling the case. In his complaint,
8 Robson does not claim that he made a mistake when he testified in 2005 or that he suffered from a
9 "repressed memory." Rather, he simply claims that he chose not to tell the truth to the jury in 2005
10 because he did not recognize that his alleged interactions with Michael Jackson were abuse. (SAC
11 at ¶ 28.) Whether Robson would be entitled to relief in this civil action—where Robson could *only*
12 prevail if a court and jury found that he perjured himself and obstructed justice in a criminal
13 proceeding—need not be decided, however. Robson's claims against the Corporate Defendants are
14 not viable as a matter of law.

15 III. LEGAL ARGUMENT

16 The standards governing demurrers are familiar. A demurrer shall be sustained if the
17 pleading "does not state facts sufficient to constitute a cause of action." Code Civ. Proc. § 430.10.
18 In ruling on a demurrer, the Court must assume that the plaintiff can prove all "properly pleaded"
19 facts, but it must "not assume the truth of contentions, deductions, or conclusions of fact or law."
20 *Leyva v. Nielson*, 83 Cal. App. 4th 1061, 1063 (2000).

21 A. Code of Civil Procedure Section 340.1 Generally.

22 California Code of Civil Procedure section 340.1 creates unusually long limitations periods
23 for certain causes of action involving childhood sexual abuse. Robson turned 18 on September 17,
24 2000, and filed this complaint on May 8, 2013. His complaint concerns events allegedly occurring
25 in or before 1997. (SAC at ¶¶ 1, 7.) Thus, unless Robson can show that his claims are within the
26 scope of section 340.1, the one-year statute of limitations for personal injury actions at the time
27 expired on September 17, 2001 (a year after Robson turned 18). *See* Code Civ. Proc. § 352
28 (minority tolling statute); *Quarry v. Doe I*, 53 Cal. 4th 945, 961 (2012); *Krupnick v. Duke Energy*

1 *Morro Bay, L.L.C.*, 115 Cal. App. 4th 1026, 1028 (2004) (former one-year limitations period for
2 personal injury claims applies to all claims which had lapsed prior to January 1, 2003). Thus,
3 section 340.1 is critical to this case and a discussion of that statute and how it operates is a
4 necessary prerequisite to discussing the viability of Robson's alleged cause of action against the
5 Corporate Defendants.

6 Subdivision (a) of section 340.1 contemplates three potential types of claims subject to one
7 of the extended limitations periods in the statute:

8 (1) An action against any *person* for committing an act of
9 childhood sexual abuse.

10 (2) An action for liability against any *person or entity* who
11 owed a duty of care to the plaintiff, where a wrongful or negligent
12 act by that person or entity was a legal cause of the childhood sexual
13 abuse which resulted in the injury to the plaintiff.

14 (3) An action for liability against any *person or entity* where
15 an intentional act by that person or entity was a legal cause of the
16 childhood sexual abuse which resulted in the injury to the plaintiff.

17 Code Civ. Proc. § 340.1(a) (emphasis added). As is apparent from the emphasized language, the
18 statute distinguishes between actions against a "person" and actions against an "entity."

19 Subdivision (a)(1) contemplates liability *only* against a "person" and not against an "entity." The
20 subdivision has therefore been interpreted to refer *only* to "a natural person," and not to a
21 corporation or other "entity." *Boy Scouts of Am. Nat. Found. v. Superior Court*, 206 Cal. App. 4th
22 428, 448 (2012). Stated otherwise, only a "natural person" may be sued as a direct perpetrator of
23 "childhood sexual abuse." *Id.* at 448-49.

24 Actions under subdivisions (a)(2) and (a)(3), however, may be brought against *either* a
25 "person or [an] entity." Code Civ. Proc. § 340.1(a)(2-3). These subdivisions are directed not to the
26 actual perpetrator of the abuse, but to *third parties* "whose negligent or intentional act was a legal
27 cause of the abuse." *Aaronoff v. Martinez-Senftner*, 136 Cal. App. 4th 910, 920 (2006).

28 "The Legislature made an obvious choice to use language for claims against third party
defendants that differed markedly from the language it ... used for claims against direct
perpetrators." *Quarry*, 53 Cal. 4th at 966. The difference between actions brought against the
perpetrator under subdivision (a)(1) and actions brought against third parties under subdivisions

1 (a)(2) and (a)(3) is critical for several reasons, at least two of which are determinative to this
2 demurrer. First, as noted, subdivisions (a)(2) and (a)(3) are *not* directed to parties who engaged in
3 the actual childhood sexual abuse, but are directed to third parties.¹ Accordingly, they require the
4 plaintiff to plead (and eventually prove) facts supporting either a viable negligence theory
5 (including pleading how and why the third party has a negligence based duty to the alleged victim
6 to, in Robson’s words “prevent” the abuse by the perpetrator), or an intentional tort theory
7 whereby the intentionally wrongful acts of a third party are the legal cause (i.e., the proximate
8 cause) of the perpetrator’s sexual abuse.

9 Second, the statute of limitations operates differently for the two categories of defendants.
10 Actions brought against the perpetrator, under subdivision (a)(1) may be brought on the latter of
11 any time (i) “within eight years of the date the plaintiff attains the age of majority,” or (ii) within
12 “three years of the date the plaintiff discovers or reasonably should have discovered that
13 psychological injury or illness occurring after the age of majority was caused by the sexual abuse.”
14 Code Civ. Proc. § 340.1(a). With one exception, however, claims brought against third parties,
15 like the Corporate Defendants here, may not be commenced at all after the plaintiff turns 26: “No
16 action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the
17 plaintiff’s 26th birthday.” *Id.* at § 340.1(b)(1). The one and only exception to this absolute bar on
18 claims filed “after the plaintiff’s 26th birthday” is found in subdivision (b)(2) of the statute. That
19 subdivision “is targeted at third party defendants who, by virtue of certain specified relationships
20 to the perpetrator (i.e., employee, volunteer, representative, or agent), could have employed
21 safeguards to prevent the sexual assault. It requires the sexual conduct to have arisen through an
22 exploitation of a relationship over which the third party has some control.” *Aaronoff*, 136 Cal.
23 App. 4th at 921. We discuss the subdivision in detail below in section III.C of this brief, at pages 8
24 through 11.

25 _____
26 ¹ “Standing alone, [subdivisions (a)(2) and (a)(3)] theoretically could apply to actions by
27 the perpetrator of the abuse. But, juxtaposed as they are with the subdivision dealing specifically
28 with the perpetrator [i.e., subdivision (a)(1)], they cannot be read to apply to the
perpetrator.” *Aaronoff*, 136 Cal. App. 4th at 920.

1 Finally, it must not be forgotten that section 340.1 is a statute of limitations; it is not a
2 statute creating a substantive cause of action and it is not intended to create new substantive
3 theories of liability. *Quarry*, 53 Cal. 4th at 966 (“the 1998 enactment lengthening the limitations
4 period for claims against third parties did not create ‘a new theory of liability’”) (quoting Code
5 Civ. Proc. § 340.1(t), formerly § 340.1(r)).

6 **B. Robson’s Lone Cause of Action Fails Against the Corporate Defendants**
7 **Because They Are Not “Persons” Under Section 340.1(a)(1).**

8 The Second Amended Complaint alleges only one cause of action against the Corporate
9 Defendants, for “Childhood Sexual Abuse.” (SAC at p. 1:3-4.) In the “charging allegations,”
10 Robson repeatedly alleges that Michael Jackson “together with his co-conspirators, alter egos,
11 aiders and abettors and agents Defendants MJJ PRODUCTIONS and MJJ VENTURES,
12 intentionally committed” various acts of childhood sexual abuse. (SAC at ¶¶ 34-54.) This lone
13 cause of action against the Corporate Defendants is untimely as a matter of law.

14 Setting aside the practical, let alone theoretical, problem with allegations that a
15 corporation engaged in sexual acts², subdivision (a)(1) of section 340.1 is clear: it only extends
16 the statute of limitations for claims against *natural persons* who are accused of engaging in such
17 acts. It does not apply to “entities,” like the Corporate Defendants, who are accused of engaging in
18 such acts. *Boy Scouts*, 206 Cal. App. 4th at 448. “Standing alone, [subdivisions (a)(2) and (a)(3)]
19 theoretically could apply to actions by the perpetrator of the abuse. But, juxtaposed as they are
20 with the subdivision dealing specifically with the perpetrator [i.e., subdivision (a)(1)], they cannot
21 be read to apply to the perpetrator.” *Aaronoff*, 136 Cal. App. 4th at 920. Accordingly, Robson’s
22 lone cause of action against the Corporate Defendants, which alleges that the Corporate
23 Defendants “intentionally committed” acts of childhood sexual abuse “does not fall within section
24 340.1, subdivision (a)(1) and is time-barred.” *Boy Scouts*, 206 Cal. App. 4th at 448.

25
26
27 ² Cf. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 466 (2010) (Stevens, J.,
28 dissenting) (“corporations have no consciences, no beliefs, no feelings, no thoughts, no desires”).

1 The Court of Appeal's decision in *Boy Scouts* is directly on point. There, three brothers
2 sued the Boy Scouts of America for injuries they suffered as a result of sexual abuse by their troop
3 leader. Like the case here, the acts allegedly occurred decades before suit was filed. *Id.* at 434-45.
4 Like the case here, suit was filed after the plaintiffs' 26th birthdays. Like the case here, the
5 plaintiffs alleged that their suit was nevertheless timely, because it was filed within three years of
6 when they first "discovered that psychological injury or illness occurring after the age of majority
7 was caused by the sexual abuse." *Id.* at 435.

8 The Boy Scouts demurred, arguing that all causes of action were time-barred because suit
9 was filed after plaintiffs turned 26, and plaintiffs did not and could not make allegations consistent
10 with subdivision (b)(2) of section 340.1. *Id.* at 436. Because suit was filed after the plaintiffs
11 turned 26, the trial court sustained the demurrer without leave to amend as to all causes of action
12 but one, which was based on allegations that the Boy Scouts was the direct perpetrator of the
13 abuse. The trial court held that that cause of action was timely because the 26th birthday cut-off
14 does not apply to claims under subdivision (a)(1) of section 340.1, i.e., claims against the direct
15 perpetrator of abuse. *Id.* at 437. The trial court held that the Boy Scouts were being sued as the
16 actual perpetrator of acts of childhood sexual abuse under subdivision (a)(1) on one cause of
17 action. In particular, the trial court relied on allegations in one cause of action that the Boy Scouts
18 itself had "commit[ted] an act of childhood sexual abuse," Code Civ. Proc. § 340.1(a)(1), by
19 violating Penal Code section 266j because the Boy Scouts allegedly made minors available to an
20 adult for lewd acts. *Boy Scouts*, 206 Cal. App. 4th at 447. These are *exactly the allegations Robson*
21 *makes against the Corporate Defendants* in his first "charging allegation." (SAC at ¶ 34.)

22 The Court of Appeal reversed, explaining "that when the Legislature omitted the word
23 'entity' from subdivision (a)(1) of section 340.1, and provided the 26th birthday cut-off in
24 subdivision (b)(1) for an action against an entity for negligent or intentional wrongdoing, the
25 Legislature intended that no claim brought against an entity defendant under section 340.1 (other
26 than a claim under subdivision (b)(2)) may be commenced after the plaintiff's 26th birthday." *Boy*
27 *Scouts*, 206 Cal. App. 4th at 445. Because the Boy Scouts are an "entity" and not a "person," and
28

1 because the action was filed after the plaintiffs' 26th birthday, the Court of Appeal held that the
2 trial court erred by not sustaining the demurrer without leave to amend. *Id.* at 448-49.

3 As to the Corporate Defendants, *Boy Scouts* is indistinguishable from the case here and this
4 Court should sustain this demurrer for the exact same reasons. The Corporate Defendants are not
5 "persons" within subdivision (a)(1) and, thus, any suit against them for allegedly "committing an
6 act of childhood sexual abuse," Code Civ. Proc. § 340.1(a)(1), "does not fall within section 340.1,
7 subdivision (a)(1) and is time-barred." *Boy Scouts*, 206 Cal. App. 4th at 448. ³ As the *only* cause of
8 action against the Corporate Defendants is one for "Childhood Sexual Abuse," (SAC at p. 1:3-4),
9 that cause of action must be dismissed without leave to amend.

10 **C. Robson Has Not and Cannot Allege Facts Consistent With Section 340.1(b)(2)**
11 **Such That This Action May Be Maintained Against the Corporate Defendants.**

12 Because this action was filed after Robson's 26th birthday and because this action was
13 filed against the Corporate Defendants who are "entities" and not "persons" under
14 section 340.1(a), Robson's action is time-barred unless he can plead facts consistent with the
15 requirements of section 340.1(b)(2). *See* Code Civ. Proc. § 340.1(b)(1), (b)(2); *Boy Scouts*, 206
16 Cal. App. 4th at 448-49.

17 Subdivision (b)(2) of section 340.1 provides that suit may be filed against an entity "after
18 the plaintiff's 26th birthday" *only* when the "entity knew or had reason to know, or was otherwise
19 on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, *and*
20 failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful
21 sexual conduct in the future by that person, including, but not limited to, preventing or avoiding
22 placement of that person in a function or environment in which contact with children is an inherent
23

24 _____
25 ³ That Robson repeatedly includes boilerplate allegations that the Corporate Defendants
26 were Michael Jackson's "co-conspirators, alter egos, aiders and abettors and agents" changes
27 nothing. The extended statute of limitations under section 340.1(a)(1) only "applies to the person
28 who allegedly committed the act of sexual abuse," *Aaronoff*, 136 Cal. App. 4th at 920, and only
applies to "natural persons" in any event. *Boy Scouts*, 206 Cal. App. 4th at 448. There are no
exceptions whatsoever for alleged "conspirators," "alter-egos," "aiders and abettors," or "agents"
of the perpetrator.

1 part of that function or environment.” Code Civ. Proc. § 340.1(b)(2) (emphasis added). In plain
2 English, this language “is targeted at third party defendants who, by virtue of certain specified
3 relationships to the perpetrator (i.e., employee, volunteer, representative, or agent), could have
4 employed safeguards to prevent the sexual assault. It requires the sexual conduct to have arisen
5 through an exploitation of a relationship over which the third party has some control.” *Aaronoff*,
6 136 Cal. App. 4th at 921. As explained by our Supreme Court, “[t]he statute’s enumeration of the
7 necessary relationship between the nonperpetrator defendant and the perpetrator implies that the
8 former was in a position to exercise some control over the latter.” *Doe v. City of Los Angeles*, 42
9 Cal. 4th 531, 544 (2007).

10 In *Aaronoff*, plaintiff brought suit against her mother (Gloria), her father (James), and
11 certain car dealership corporations, in which the plaintiff’s parents were officers and directors.
12 *Aaronoff*, 136 Cal. App. 4th at 914. The operative complaint alleged that plaintiff’s father and
13 mother both worked at the defendant car dealerships. *Id.* at 917. The plaintiff also had been hired
14 by her parents to work at the car dealerships when she was eight years old and continued to work
15 there at least through the time she was thirteen (child labor laws notwithstanding, apparently). *Id.*
16 at 916-17. The complaint alleged that the father molested the plaintiff from when she was four
17 years-old until she was thirteen years-old. From the time that the plaintiff was ten years-old, she
18 had apparently been molested by her father during business hours at the car dealerships. *Id.* at 917.
19 Allegedly, plaintiff’s mother, Gloria, knew about and witnessed the abuse by plaintiff’s father,
20 James, but took no steps to prevent it. *Ibid.* Similar to the allegations against the Corporate
21 Defendants here, the operative complaint in *Aaronoff* alleged that “Gloria was fully aware of the
22 extent and scope of the depraved pattern of sexual abuse carried out by James against plaintiff, and
23 hence was his aider, abettor and co-conspirator in carrying out and concealing the sexual abuse
24 and molestation. Furthermore, Gloria was an officer and employee of [the car dealership
25 corporations] and had a duty to take reasonable safeguards to prevent employees and/or agents of
26 those businesses from committing acts of unlawful sexual conduct against minors.” *Ibid.*

27 The trial court sustained a demurrer without leave to amend against the mother Gloria,
28 finding that the allegations of the operative complaint were not sufficient under subdivision (b)(2)

1 of section 340.1. *Id.* at 918. ⁴ In affirming the trial court, the Court of Appeal construed
2 subdivision (b)(2) to be inapplicable to a “parental relationship.” *Id.* at 921. Thus, in order for the
3 plaintiff’s claims against her mother to survive, plaintiff had to connect the claims to the
4 businesses. The statute “requires the sexual conduct to have arisen through an exploitation of a
5 relationship over which the third party has some control. In other words, the perpetrator’s access
6 to the victim must arise out of the perpetrator’s employment with, representation of, agency to,
7 etc., the third party, and the third party must be in such a relationship with the perpetrator as to
8 have some control over the perpetrator. The child must be exposed to the perpetrator as an
9 inherent part of the environment created by the relationship between the perpetrator and the third
10 party, in this case a business environment.” *Id.* at 921. The Court further explained that “[t]he
11 language of the statute necessarily implies that the unlawful sexual conduct arises out of an
12 environment over which the third party has some control. Otherwise, it would be impossible for
13 the third party to take steps and implement safeguards to avoid future abuse.” *Id.* at 921-22. As the
14 abuse did not arise out of a relationship whereby the third party—the mother Gloria in *Aaronoff*—
15 had control over the perpetrator, the Court of Appeal held that the claims against Gloria were
16 barred since the complaint was filed after the plaintiff’s 26th birthday and because the plaintiff
17 could not show that Gloria came within the scope of subdivision (b)(2). *Id.* at 923.⁵

18 The *Aaronoff* Court’s interpretation of subdivision (b)(2) has since been adopted by the
19 California Supreme Court and by other districts of the Court of Appeal. *See Doe*, 42 Cal. 4th at
20 543 (affirming trial court’s order sustaining demurrer without leave to amend because plaintiff
21 was over the age of 26 and allegations of complaint did not conform to section 340.1(b)(2));

22
23 ⁴ The Court of Appeal held that the claim against the father, James, as a direct perpetrator
24 was barred by the collateral estoppel effect of rulings in a prior suit. That ruling did not apply to
25 the mother, Gloria, who was not sued as a direct perpetrator. *Aaronoff*, 136 Cal. App. 4th at 921-
26 22. The car dealership corporations were never served but, as the trial court held, “the addition of
27 the business entities did not change the analysis as to the individual defendants.” *Id.* at 914.

28 ⁵ Technically, the Court found that the claims were not revived by the provisions of
subdivision (c) of 340.1; subdivision (c) only revived claims that were within the scope of
subdivision (b)(2), however, so the analysis was exactly the same.

1 *Joseph v. Johnson*, 178 Cal. App. 4th 1404, 1410-12 (2009) (affirming trial court's order
2 sustaining demurrer without leave to amend against a natural person for all claims subject to
3 section 340.1(b)(2) but reversing for claims where the person was allegedly a direct "perpetrator").

4 In this case, Robson has not even attempted to make allegations consistent with
5 subdivision (b)(2). This is not surprising: Robson's allegations are *directly contrary* to the
6 requirements of that subdivision. Like *Aaronoff*, the abuse alleged by Robson first took place long
7 before Robson had any relationship with the Corporate Defendants. (*Id.* at ¶¶ 10-11.) Thus,
8 Robson was *not* "exposed to the perpetrator as an inherent part of the environment created by the
9 relationship between the perpetrator and [the Corporate Defendants], in this case a business
10 environment." *Aaronoff*, 136 Cal. App. 4th at 921-22. Moreover, like the third parties in *Aaronoff*,
11 the Corporate Defendants had no control over the perpetrator. In fact, the allegations are precisely
12 the opposite: *the alleged perpetrator controlled the Corporate Defendants* and used them to carry
13 out his own plans. Robson alleges "that Decedent ... used [Corporate Defendant] MJJ Productions
14 to set up, facilitate and arrange meetings and encounters between Decedent and Plaintiff for the
15 purpose of DECEDENT engaging in childhood sexual abuse of Plaintiff." (SAC at ¶ 3.) Robson
16 alleges the same for Corporate Defendant MJJ Ventures. (*Id.* at ¶ 4.) He also *repeatedly alleges*
17 that the Corporate Defendants were the perpetrator's "alter egos" and "agents." (*Id.* at ¶ 5, ¶¶ 34-
18 54.) Robson alleges that the perpetrator "arranged for his companies Defendants MJJ
19 PRODUCTIONS and MJJ VENTURES to hire Plaintiff and his mother." (*Id.* at ¶ 17.) Clearly, the
20 Corporate Defendants did not have "control" over the perpetrator here. In fact, it was the exact
21 opposite: the alleged perpetrator directly controlled the Corporate Defendants. Thus "it would be
22 impossible for [the Corporate Defendants] to take steps and implement safeguards to avoid future
23 abuse." *Aaronoff*, 136 Cal. App. 4th at 921-22.

24 Simply put, because Robson filed this action after his 26th birthday, he had to make
25 allegations consistent with subdivision (b)(2) of section 340.1. Not only has he failed to do that, he
26 has made allegations *contrary* to the requirements of that subdivision. Accordingly, this Court
27 should sustain this demurrer without leave to amend, just as every court did in the cases cited in
28 this brief. *Doe*, 42 Cal. 4th at 543 (affirming trial court order sustaining demurrer without leave to

1 amend on complaint against third party defendant filed after plaintiff's 26th birthday); *Boy Scouts*,
2 206 Cal. App. 4th at 447 (same); *Aaronoff*, 136 Cal. App. 4th at 922 (same); *Joseph*, 178 Cal.
3 App. 4th at 1410-12 (same as to all claims subject to 26th birthday cut-off).

4 **D. Robson Has Not and Cannot Alleged Facts Stating a Cause of Action Against a**
5 **Third Party Consistent With Subdivisions (a)(2) or (a)(3) of Section 340.1.**

6 Even if Robson had not alleged facts directly contrary to subdivision (b)(2) of section
7 340.1, his claims against the Corporate Defendants would still be barred as a matter of law
8 because he has not, and cannot, allege a cause of action against the Corporate Defendants within
9 the scope of subdivisions (a)(2) or (a)(3) of section 340.1 in the first place.

10 The complaint alleges boilerplate that the Corporate Defendants "owed a duty of care to
11 the Plaintiff and their wrongful, intentional and/or negligent acts, as well as knowing failure to
12 take reasonable steps to prevent DECEDENT from engaging in childhood sexual abuse, were a
13 legal cause of the childhood sexual abuse." (SAC at ¶¶ 5, 54.) These allegations are so ambiguous
14 that they are essentially meaningless. Furthermore, they are hornbook examples of "contentions,
15 deductions, or conclusions of fact or law," which must be ignored when adjudicating a demurrer.
16 *Leyva*, 83 Cal. App. 4th at 1063. *See also Moore v. Regents of Univ. of California*, 51 Cal. 3d 120,
17 134 n. 12 (1990) (characterizing similar allegations regarding secondary liability as "egregious
18 examples of generic boilerplate").

19 Robson's complaint contains no factual allegations, because none exist, to support a claim
20 that the Corporate Defendants had a negligence-based duty under subdivision (a)(2) "to take
21 reasonable steps to prevent" acts of sexual abuse. Indeed, "[g]enerally, a person owes no duty to
22 control the conduct of another. Exceptions are recognized in limited situations where a special
23 relationship exists between the defendant and the injured party, or between the defendant and the
24 active wrongdoer." *Beauchene v. Synanon Found. Inc.*, 88 Cal. App. 3d 342, 347 (1979)
25 (affirming trial court's order sustaining demurrer without leave to amend on claim of negligent
26 supervision against defendant with custody of a juvenile delinquent, who defendant knew was
27 violent, where defendant negligently allowed juvenile to escape its premises and engage in "a
28 'crime spree' that included the harming or killing of several people"). No such "special

1 relationship” has been, or could be, alleged here. *See generally* Restatement (Second) Torts at
2 §§ 314A-320; *Elsheref v. Applied Materials, Inc.*, 223 Cal. App. 4th 451, 461265 (2014) (no
3 special relationship based solely on employer/employee relationship).

4 As to an intentional tort theory under subdivision (a)(3), Robson’s complaint contains no
5 allegations that the legal cause of his alleged abuse by Michael Jackson was the result of any
6 *intentionally tortious acts by the Corporate Defendants*. Robson’s allegations that Michael
7 Jackson was the “president and owner” of the Corporate Defendants during the relevant time
8 period (SAC at ¶¶ 3-4) are insufficient. Corporations are not strictly liable for the (alleged)
9 criminal or tortious acts of their “president and owner.” Rather, for a corporation to be vicariously
10 liable for such acts, the intentionally tortious acts of a corporation’s employee must be in the
11 course and scope of employment. *Lisa M. v. Henry Mayo Newhall Mem’l Hosp.*, 12 Cal. 4th 291,
12 301-02 (1995) (hospital not liable for sexual assault by ultrasound technician because technician’s
13 “motivating emotions [for assault] were not causally attributable to his employment”). The
14 Legislative history respecting section 340.1, itself, could not be more clear on this issue: “an
15 employee’s commission of a crime, such as the sexual abuse of a child, *obviously lies outside the*
16 *scope of a person’s employment.*” *Aaronoff*, 136 Cal. App. 4th at 922 (emphasis added) (quoting
17 Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1799 (2001–2002 Reg. Sess.) as amended May
18 2, 2002, the 2002 amendments and revisions to Code Civ. Proc. § 340.1).

19 For this independent reason, Robson’s claims would be barred as a matter of law even if he
20 had brought this action prior to his 26th birthday.

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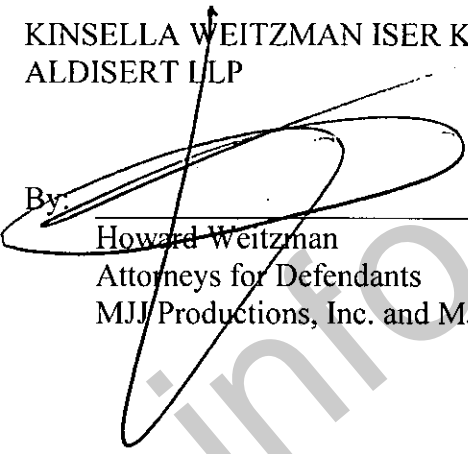
1 IV. CONCLUSION

2 For all of the reasons stated above, defendants MJJ Productions, Inc., and MJJ
3 Productions, Inc., respectfully request that their demurrers to Wade Robson's Second Amended
4 Complaint be sustained without leave to amend.

5 DATED: June 20, 2014

Respectfully Submitted:

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7 ALDISERT LLP

8
9 By: 
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12 MJJ Productions, Inc. and MJJ Ventures, Inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 808 Wilshire Boulevard, 3rd Floor, Santa Monica, CA 90401.

On June 20, 2014, I served true copies of the following document(s) described as **NOTICE OF HEARING ON DEMURRER AND DEMURRER TO SECOND AMENDED COMPLAINT BY DEFENDANTS MJJ PRODUCTIONS, INC. AND MJJ VENTURES, INC.; MEMORANDUM OF POINTS AN AUTHORITIES IN SUPPORT** on the interested parties in this action as follows:

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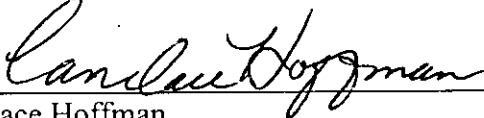
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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Kinsella Weitzman Iser Kump & Aldisert LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a courtesy copy of the document(s) to be sent from e-mail address choffman@kwikalaw.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed above or on the attached Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 20, 2014, at Santa Monica, California.


Candace Hoffman