

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 50/85/02

DEPT. 51

HONORABLE MITCHELL L. BECKLOFF

JUDGE

J. MANRIQUE

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

8:30 am

BC508502

Plaintiff

Counsel

WADE ROBSON

NO APPEARANCES

VS

Defendant

DOE 1 ET AL

Counsel

R/T: BP117321

**NATURE OF PROCEEDINGS:**

BC508502

**RULING ON SUBMITTED MATTER**

(Corporate Defendants' Demurrer filed March 10, 2015)

On July 20, 2015, this court heard argument on the Demurrer to Third Amended Complaint by Defendants MJJ Productions, Inc. and MJJ Ventures, Inc. and took the matter under submission.

Having considered the papers and the arguments of counsel, the court finds/orders as follows:

The parties' requests for judicial notice are granted.

The focus of this demurrer is Code of Civil Procedure section 340.1, subdivision (b)(2) and whether plaintiff, Wade Robson, has alleged sufficient facts in his Third Amended Complaint ("TAC") to allow him to proceed on an action against these corporate defendants filed after his 26th birthday. (See Code of Civ. Proc. Section 340.1, subs. (a)(2), (a)(3), (b)(1) and (b)(2).) (All further statutory references are to the Code of Civil Procedure unless otherwise noted.)

(Defendants' notice and the demurrer raises only a statute of limitations issue. In the memorandum of points and authorities at footnote 1, defendants raise a duty argument. Plaintiff addresses the duty

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argument in footnote 5 of its opposition.)

Our Supreme Court explained the component parts of section 340.1, subdivision (b)(2) in Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 545-546:

"The words of subdivision (b)(2) create three conditions that must be met before it applies to a particular case: (1) the nonperpetrator 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) "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." Moreover, the "unlawful sexual conduct" refers to the acts specified in section 340.1, subdivision (e), which defines "[c]hildhood sexual abuse" in terms of seven provisions of the Penal Code describing various prohibited sexual acts against minors." (Italics omitted.)

The Supreme Court's Doe decision also expresses the Supreme Court's view "the doctrine of less particularity may be especially appropriate in this setting." (Id. at 550.) "This doctrine provides that '[l]ess particularity [in pleading] is required when

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it appears that defendant has superior knowledge of the facts, so long as the pleading gives notice of the issues sufficient to enable preparation of a defense." (Id. at 549-550.)

Finally, while Doe recognizes a "complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts," it also admonishes boilerplate allegations are insufficient. (Id. at 550, 551 n. 5.)

Focusing on the component parts of section 340.1, subd. (b)(2) identified by Doe, there is a factual dispute this court cannot address on demurrer as to the third element - failing to take reasonable steps to avoid acts of unlawful sexual conduct - an element that necessarily "implies that the [non-perpetrator defendant] was in a position to exercise some control over the [perpetrator]."

Plaintiff has alleged the ultimate fact defendants had the ability to control Michael Jackson. (TAC paras. 4 and 5.) Plaintiff's allegations are more than mere boilerplate because plaintiff has alleged some facts demonstrating certain individuals within defendants (Norma Staikos) had "some control" and authority beyond that of Michael Jackson. (TAC para. 29.) The extent of the control and authority - and whether it satisfies this third element of section 340.1, subdivision (b)(2) requires a factual determination in a proceeding beyond a demurrer.

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While it is true plaintiff has alleged Michael Jackson was the owner and President of defendants, little else is alleged about the structure and culture of the defendants. (Michael Jackson's ownership of the stock for defendants is alleged on information and belief in the relevant Certificates of Merit.) Plaintiff has alleged facts suggesting at least one person, Ms. Staikos, had significant decision-making authority within the organizations. (TAC paras. 29, 21, 22 and 30.) Ms. Staikos, according to plaintiff's allegations, "had forced" Michael Jackson to accede to her decision on at least one occasion. (TAC para. 29.)

As the parties are well aware, on a demurrer, the court must construe all allegations of the complaint liberally and allow all reasonable inferences and implications in favor of plaintiff. Given this standard, plaintiff has met his pleading requirement as to this third element of section 340.1, subdivision (b)(2).

The second element of section 340.1, subd. (b)(2) identified by Doe - the perpetrator was an employee, agent or representative of the non-perpetrator defendant and engaged in unlawful sexual conduct - is not challenged here. Certainly, plaintiff has alleged Michael Jackson was a representative or agent of defendants and the complaint specifies the Penal Code violations involved.

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Defendants, however, do raise an argument related to the second element. Defendants argue the relationships between them and plaintiff were incidental to the abuse. Defendants argue this case is similar to Aaronoff v. Martinez-Senftner (2006) 136 Cal.App.4th 910 where the sexual abuse rose from the parent/child relationship and did not arise out of a business relationship and section 340.1, subdivision (b) (2) was found inapplicable.

Defendants argue the sexual abuse here "predated" plaintiff's employment with defendants. (Demurrer p. 11.) Defendants assert the sexual abuse "first started" in 1990 prior to any relationship to plaintiff and defendants. Defendants focus on Aaronoff's use of the language "arisen" and "must arise out of" in describing the relationship between plaintiff and the non-perpetrator entity.

The Supreme Court did not address this notion in Doe. Doe did, however, cite this language from Aaronoff in its opinion.

Plaintiff has alleged sufficient facts of a business environment connection between him and defendants. Certainly, there are allegations Michael Jackson sexually abused plaintiff prior to any business relationship. The allegations concerning the intial molestation and the molestation occurring during two visits in the United States (of a one week and a six week duration) were outside of any business

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environment.

Paragraph 24 alleges, however, defendants arranged for plaintiff and plaintiff's mother's immigration to the United States. Plaintiff's residency in the United States and involvement with Michael Jackson was facilitated and promoted by defendants. Defendants employed plaintiff and his mother to promote the sexual abuse. (TAC paras. 4 and 5.)

As to the last element of section 340.1, subdivision (b)(2) - the non-perpetrator's knowledge or reason to know or was otherwise on notice of unlawful sexual conduct - plaintiff has alleged sufficient facts to survive demurrer. Like the control element, the issue turns, to some extent, on a factual determination.

Pursuant to Doe, an entity has reason to know of the unlawful sexual abuse when the entity "has information from which a person of reasonable intelligence or of the superior intelligence of the actor would infer that the fact in question exists, or that such person would govern his conduct upon the assumption that such fact exists." (Doe v. City of Los Angeles, supra, 42 Cal.4th at 574.)

Paragraph 28 of the TAC alleges in 1989 Ms. Staikos advised an employee (over whom Ms. Staikos had apparent authority) not to leave the employee's son alone with Michael Jackson. Ms. Staikos stated,

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according to the allegations, Michael Jackson should be "glad" that she understood "his problem."

There are many facts alleged supporting this knowledge element. (Paragraphs 39, 35, 36, 14 and 22.) Certainly, the facts alleged are sufficient to raise a factual issue that cannot be determined by demurrer.

The demurrer on the issue of statute of limitations is overruled on the grounds set forth above. Defendants shall answer within 10 days.

The duty raised by defendants in their footnote 1 is also overruled.

The clerk shall give notice.

**CLERK'S CERTIFICATE OF MAILING**

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered

<b>MINUTES ENTERED</b> 50/85/02 COUNTY CLERK
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herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: September 24, 2015

Sherri R. Carter, Executive Officer/Clerk

By: \_\_\_\_\_  
J. Manrique

Howard Weitzman, Esq.  
Kinsella Weitman et al.  
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<p align="center"><b>MINUTES ENTERED</b> 50/85/02 <b>COUNTY CLERK</b></p>
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