2d Civ. No. B288036

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

WADE ROBSON,

Plaintiff and Appellant,

v.

MJJ PRODUCTIONS, INC. and
MJJ VENTURES, INC.

Defendants and Respondents.

Appeal from Los Angeles Superior Court
Case No. BC 508502
Honorable Mitchell L. Beckloff, presiding

RESPONDENTS' BRIEF

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Court of Appeal
State of California
Second Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case No: B288036

Case Name: Wade Robson v. MJJ Productions, Inc. and MJJ Ventures, Inc.

Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. John Branca, in his capacities as Co-Executor of the Estate of Michael Jackson and Co-Trustee of the Michael Jackson Family Trust	Legal owner (with his co-executor and co-trustee) of all stock in both Defendants
2. John McClain, in his capacities as Co-Executor of the Estate of Michael Jackson and Co-Trustee of the Michael Jackson Family Trust	Legal owner (with his co-executor and co-trustee) of all stock in both Defendants
3. The Michael Jackson Family Trust	Sole beneficiary of the Estate of Michael Jackson and, by extension, beneficial owner of all stock in both Defendants
4. Michael Joseph Jackson, Jr.	Beneficiary of the Michael Jackson Family Trust
5. Paris-Michael Katherine Jackson	Beneficiary of the Michael Jackson Family Trust

6. Prince Michael Jackson, II	Beneficiary of the Michael Jackson Family Trust
7. Katherine Jackson	Beneficiary of the Michael Jackson Family Trust
8. Office of the Attorney General for the State of California (Charitable Trusts Section)	The Michael Jackson Family Trust includes a devise to unnamed charities and, under the Probate Code, the Office of the Attorney General is therefore an interested person

s/ Jonathan P. Steinsapir

Signature of Attorney/Party Submitting Form

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MJJ Ventures, Inc.

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INTRODUCTION

Michael Jackson passed away on June 25, 2009. Four years later, appellant Wade Robson petitioned to file a late creditor's claim seeking money damages against Jackson's estate ("the Estate"). Robson claimed that he had been a victim of sexual abuse by Jackson when Robson was a child in the 1990s. The Estate categorically denies Robson's allegations, which are contrary to prior, lengthy sworn testimony by Robson as an adult in a jury trial, and are contrary to the overwhelming weight of evidence produced in discovery below. That said, this appeal is not about the truth of Robson's allegations. It is about the law.

After extensive discovery and briefing, the probate court dismissed Robson's petition against the Estate in 2015 in a detailed order, finding that Robson filed his petition far too late, missing the deadline to file claims against a decedent's estate by many years. Robson never appealed that decision. Rather, he tried to end-run it by prosecuting this civil action against two of Jackson's wholly-owned companies, respondents MJJ Productions, Inc., and MJJ Ventures, Inc. ("the Corporations"), which are part of the Estate. In December 2017, the trial court granted summary judgment for the Corporations, finding that Robson's claims against them were also filed too late under the

applicable statute of limitations governing civil claims arising out of childhood sexual abuse: Code of Civil Procedure section 340.1.[1]

Section 340.1 is one of the State's most carefully crafted civil statutes of limitations. Between 1986 and 2002, the Legislature revisited it numerous times, finally settling on the current statute, which carefully balances the public interest in repose and finality against the public interest in compensation for alleged wrongs. Section 340.1 provides a very generous limitations period for civil claims arising out of childhood sexual abuse. At the same time, it tempers this period for causes of action against "third-party defendants," i.e., defendants who, like respondents here, were not the actual perpetrators of the alleged abuse. As to those defendants, the Legislature decreed a hard stop at a plaintiff's 26th birthday. (§340.1, subd. (b)(1).) Robson did not sue until he was 30 years old, far too late.

There is one, and just one, "*narrow exception* to the age 26 cutoff for a subcategory of third party defendants." (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 983, italics added.) Specifically, if a third-party defendant knew about prior abuse by its "employee, volunteer, representative, or agent" but "failed to take reasonable steps, and to implement reasonable safeguards" to prevent future

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[1] Unless specifically noted otherwise, all further citations are to the Code of Civil Procedure.

abuse, the limitations period extends past age 26 until three years from reasonable discovery of injury resulting from the abuse. (§340.1, subd. (b)(2) ("§340.1(b)(2)").) Based on the summary judgment record, the trial court correctly found that there is no genuine dispute of material fact and that Robson's claims against respondents do *not* fall within that "narrow exception."

Jackson controlled the Corporations as a matter of fact and law. He was their president and, as Robson asserts, their "alter ego." Jackson owned them entirely and fully controlled their boards. Their purpose was to furnish Jackson's unique, personal services. In sum, Robson is really arguing that Jackson, through his Corporations, was required "to take reasonable steps, and to implement reasonable safeguards" *to prevent himself* from engaging in acts of abuse. That is not a genuine claim against "third-party defendants." It is an attempt to avoid the Probate Code's claims filing deadlines by disguising intentional tort claims against Jackson himself as "third-party" claims against Jackson's companies, dressing up accusations of criminal conduct in the language of section 340.1(b)(2), negligence law, and other third-party liability theories.

At bottom, the true bar to Robson's claims is that Michael Jackson is dead, and that Robson missed the probate claims filing deadlines by several years (years during which he was seeking

work from the Estate). Were Jackson alive when Robson filed his claims, section 340.1 would have likely permitted Robson to sue Jackson directly for assault, battery, etc., because there is no age 26 cutoff for claims against the alleged perpetrator of the abuse. (§340.1, subd. (a).) There would be no need to debate the finer points of section 340.1(b)(2).

But Jackson was not alive when Robson sued. And absent compliance with the claims filing requirements, you cannot sue a dead man. A necessary corollary to that rule, of course, is that a dead man cannot sue you either. In other words, Robson is free to press his accusations against Jackson in the *court of public opinion*—as he has done so loudly and repeatedly—without fear of being sued for defamation and related claims by Jackson's Estate, by Jackson's three children, or by others with an interest in protecting the memory and reputation of the late icon. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 680-683.) But the time for Robson to press his case in a *court of law* by seeking money damages from Jackson's heirs—his children, his mother, and various charities—has long since passed.

Statutes of limitations "are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." (*Lackner v. LaCroix*

(1979) 25 Cal.3d 747, 751.) Those interests were promoted by the judgment here. It should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Although respondents categorically deny Robson's allegations, this brief recites the evidence in the light most favorable to Robson as required by the standard of review. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) It focuses on the undisputed evidence relevant to the issue on appeal: whether Robson's claims fall within Code of Civil Procedure section 340.1(b)(2)'s extended statute of limitations.

A. MJJ Productions And MJJ Ventures.

Respondents MJJ Productions, Inc. and MJJ Ventures, Inc. (collectively, the "Corporations") are California corporations. (1 Appellant's Appendix (AA) 140, 142, 509, 516.)[2]

MJJ Productions was founded in 1979 as one of Michael Jackson's "loan-out corporations," furnishing his services as a recording artist. It entered into contracts with Jackson's record label; owns the copyrights in the sound recordings on Jackson's

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[2] AA cites are in the format [vol.] AA [page]. AA cites are to the redacted volumes of the appendix, unless otherwise specified. Cites to the Unredacted AA are in the format: [vol] Unredacted AA [page]. The trial court specifically ordered the sealing of several exhibits and unredacted pleadings in the Unredacted Appendix. (Respondents' Appendix ("RA") 3-5.) Robson has not challenged that order.

albums; and collects royalties on exploitation of those recordings. (1 AA 141, 511.) MJJ Ventures was founded in February 1991 to hold Jackson's interest in a joint venture between Jackson and his record label, which exploits various artists' sound recordings. (1 AA 142-143, 516-517.)

These two corporations were among many business entities Michael Jackson owned during his lifetime to run specific aspects of his businesses. (2 AA 685; 2 Unredacted AA 4447-4450.) Neither MJJ Productions nor MJJ Ventures furnished Jackson's services on his concert tours, funded or operated his concert tours, or otherwise had anything to do with his concert tours. (1 AA 141, 143.) And neither Corporation owned the copyrights in the many famous songs that Jackson wrote (i.e., his "publishing" or "musical compositions").[3] (1 AA 141, 143.)

Michael Jackson was the sole shareholder of both Corporations during his lifetime, and they are now a part of the

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[3] When an artist writes a song, she owns a copyright in the "musical composition," i.e., the music and lyrics embodied in that composition. A "sound recording" is *one particular* recorded performance of a song (when a sound recording is played, a license to the composition *and* recording is needed, but when a song is played live, e.g., at concert, only a license to the composition is necessary). (See U.S. Copyright Office, Circular 50 (2017) pp. 1-2 <www.copyright.gov/circs/circ50.pdf>.) MJJ Productions only owns sound recordings, not musical compositions that Jackson wrote. (1 AA 141.)

Estate. (1 AA 140-143, 509, 516.) For most years relevant to this case, Jackson was the sole member of both Corporations' boards of directors. (1 AA 513, 518; 1 AA 140, 142, 193.) In June 1994, Jackson increased the Corporations' boards from one director to four. (1 AA 513, 518; 1 AA 140, 142, 193-194, 231-232.) He appointed himself, his lawyer, his talent manager, and his business manager as the directors. (1 AA 138, 140, 142, 513, 518.)

The Corporations' bylaws state that the boards manage the Corporations' affairs. (1 AA 158, 207, 515.) Despite appointing his advisers to assist him in June 1994, Jackson ultimately retained full control of both boards. As sole shareholder of the Corporations, he had the power to remove any directors at any time, for any reason, without notice, as a matter of law. (Corp. Code, §§303, 603.)

B. Michael Jackson's Homes.

In 1987, Michael Jackson acquired a large ranch in Santa Barbara County. He named it the "Neverland Valley Ranch" (sometimes, "the Ranch"). Jackson held title to the Ranch in his own name from the time he acquired it until the 2000s. The Corporations never owned any interest in the Ranch. (1AA 143-144, 521-522.) At times in the late 1980s and in the 1990s, Jackson owned apartments in Los Angeles where he spent time while in town. The Corporations never owned any interest in those apartments. (1AA 143-144, 522.)

Robson contends that the Corporations employed, and paid for, Jackson's personal staff at his homes. (1 AA 537.) But by Robson's own account, Jackson ultimately controlled what happened at Jackson's own homes. Robson himself described the Ranch as "2,700 acres of impenetrable Michael Jackson country governed by one man only, Michael Jackson," and cited the Ranch as an example of Jackson "liv[ing] in a world of his own creation, governed by his own rules. A world that HE could control." (1 AA 524-525; 1 Unredacted AA 4251, 4263.)

Similarly, Robson's mother, Joy Robson (or "Mrs. Robson"), testified that Jackson so controlled the Ranch that he told people who they could and could not talk to there. Jackson "didn't want us talking to the staff [at the Ranch], and he didn't allow the staff to talk to us." (1 AA 266-267, 526.) According to Mrs. Robson, "If you did anything to upset Michael, he would cut you off. . . . So in order to remain his friend, you had to abide by his rules." (1 AA 287, 526.)

There is no genuine dispute that the Corporations had no ability to: (a) control when Jackson could arrive at and leave the Ranch or his apartments, and with whom; (b) dictate who could and could not visit Jackson at the Ranch or his apartments; or (c) create any sort of "procedures" for when Jackson arrived and left the Ranch or his apartments and who could and could not visit him at the Ranch or his apartments. (1 AA 143-144, 340-

341, 348-350, 522-524 [Robson purported to "dispute" this, but only cited irrelevant evidence about the bylaws of the Corporations which say nothing about Jackson's homes].)

C. The Robson Family Befriends Jackson.

Robson was born in 1982 in Australia. (1 AA 509.) When he was two years old, his mother showed him Michael Jackson's *The Making of Thriller*. Robson "was instantly fascinated with the music video and watched it every day." (1 AA 527.) Over time, Robson's fascination with Jackson "grew into an obsession. Michael Jackson became like an entertainment 'God' to [Robson]." (1 AA 29, 527.)

In 1987, Robson's mother entered him in a dance contest in Australia sponsored by Target, Pepsi, and CBS Records. (1 AA 29, 239, 242, 528.) Robson won the contest. As the prize, he and his mother briefly met Jackson before a local concert. (1 AA 29, 240-241, 528.) Robson danced with Jackson at a concert the next night. (1 AA 528.) The night after that, Robson and his mother went to the hotel where Jackson was staying to deliver a thank-you note and ended up visiting Jackson in his hotel room. (1 AA 29, 243, 529.) Robson then "dedicated his life to dance performances, imitating Michael Jackson." (1 AA 29, capitalization altered.)

Over the next two years, Robson's mother sent Jackson letters and videos, but Jackson never responded. (1 AA 243-246,

529.) Then, in 1990, the Robson family visited California when Robson and his sister performed at Disneyland with their talent school. (1 AA 246-247, 529.)

Robson's mother set out to reconnect with Jackson during the family's trip, calling television stations to track him down. (1 AA 247-248, 251-252; 3 AA 3342-3343.) She eventually found a phone number for Jackson's personal assistant, who was employed by MJJ Productions. (1 AA 246-248, 530; 3 AA 3343.) Through the assistant, Jackson invited the Robson family to visit him at Record One recording studio. (1 AA 249, 530; 3 AA 3128.)[4]

After spending time with the family at Record One, Jackson personally invited them to spend the weekend at the Ranch, and offered to drive Robson and his sister there. (1 AA 253, 530; 3 AA 3129.) The family took him up on both offers. (1 AA 30, 253.) Robson now contends that Jackson began molesting him while at the Ranch. (1 AA 531.)

Robson and his mother visited Jackson twice more over the next year-and-a-half. (1 AA 259, 531.) In May 1990, at Jackson's request, the company L.A. Gear paid for their travel to the United States to participate in an L.A. Gear photo shoot with Jackson. (1 AA 259-261, 531, 551.) Robson and his mother then

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[4] There is no evidence in the record that the Corporations owned, controlled, or contracted with Record One (nor did they).

returned for a week in February 1991 at Jackson's invitation to meet a choreographer Jackson worked with. (1 AA 272-273, 531.) Between visits, Jackson called Robson and his mother, faxed notes to them, and directed his personal assistants, employed by MJJ Productions, to send gifts to Robson's family. (E.g., 3 AA 3030, 3032, 3407-3408; 4 AA 3683.)

In September 1991, Robson, his mother, and his sister moved to the United States permanently. (1 AA 276, 531.) Mrs. Robson began considering the move almost a year earlier, to pursue Robson's career in the entertainment industry. (1 AA 269, 276-277, 532.) She asked Jackson, with whom she was good friends by then, to sponsor their immigration. (1 AA 256-259, 288-289, 296-297, 532-533.) Jackson agreed and, according to Robson's mother, "instructed his office to do whatever was needed." (1 AA 288.) As a result, the Corporations petitioned for visas for Robson, his mother, and his sister. (1 AA 553; 4 AA 3723-3725.) The visa application explained that the Corporations had offered Robson temporary employment as a dancer and performing artist and that Mrs. Robson was his manager. (4 AA 3723-3725.)

The Corporations continued to sponsor the Robsons' visas after they arrived in the United States. (4 AA 3729-3732.) But Mrs. Robson quickly realized that she had to take the reins in advancing her son's career in the United States, because Robson's

work with Jackson was limited and did not pay the bills. (1AA 277-280, 283-284.) In her words, "being around Michael had never been about furthering [Robson's] career for me after we arrived in the United States." (1 AA 312, 353, 533.)

When allegations were made in 1993 that Jackson had molested a boy, Mrs. Robson believed that Jackson was innocent. (1 AA 303-304, 534.) Robson's mother was aware that Robson slept in Jackson's bedroom throughout the time they knew him, both before and after they moved to the United States. (1 AA 254-256, 264, 534.) She had no concerns about it because she "just automatically trusted [Michael]. He was just one of those people . . . [T]here was never anything that gave me concern at the time." (1 AA 255-256, 534.)

Mrs. Robson did not mention the Corporations when explaining why she trusted Jackson to spend time alone with her son (as a parent might, for example, mention the Church when explaining why the parent trusted a priest to be alone with her son). When asked about the Corporations, she knew little about them. She said that she understood that they were Jackson's companies, and that "some of the things that Michael did went through Ventures, and some went through Productions. I'm not sure how they separated that." (1 AA 292-293, 535.)

Robson now contends that Jackson molested him between 1990 and 1997 at various locations including the Ranch,

Jackson's apartments, the Robsons' condo in Hollywood, the Record One recording studio, and hotels where Jackson, Robson, and Robson's mother stayed. (1 AA 509, 531; 3 AA 3137, 3160-3162, 3167-3169, 3199-3201.)

D. Wade Robson Testifies That Jackson Never Molested Him.

In 2005, Jackson was tried on sexual abuse charges in California. (1 AA 38.) A then-22 year-old Robson testified in the criminal trial that he never had any sexual contact with Jackson. (1 AA 37-39, 146, 362-363, 365, 377, 381, 394, 397, 408; 3 AA 3039.) He did not waver from that position despite an aggressive and detailed cross-examination inquiring about all aspects of his relationship with Jackson. (1 AA 369-416, 418-428, 432-434.)

Robson now claims that his sworn testimony in 2005 was knowingly false in just about every detail. (3 AA 3172-3173, 3180-3189.) He explains that he did not tell the truth during his testimony because, in 2005, he "did not believe that [he] was sexually abused" by Jackson, but was "absolutely fine with what went on between us." (Respondents' Motion for Judicial Notice ("Respondents' RJN") 29 ¶20; 1 AA 38-39.) That said, Robson says he "never forgot the facts of what occurred," and understood that he was testifying under oath. (3 AA 3132, 3179-3190, 3195.)

E. Michael Jackson Dies, Triggering Deadlines For Filing Claims Against His Estate.

Michael Jackson died on June 25, 2009. (1 AA 508.) His will was admitted to probate shortly thereafter. (Respondents' RJN 20, 34.) His estate is administered by its co-executors for the benefit of Jackson's trust, the sole beneficiaries of which are Jackson's three children, his mother, and charities. (*Id.* at pp. 34-35.)

Like most states, California has "nonclaim statutes" providing limited time periods during which claims against a decedent may be filed against his or her estate. (*Tulsa Prof'l Collection Servs., Inc. v. Pope* (1988) 485 U.S. 478, 480.) Such statutes "serve[ ] the State's interest in facilitating the administration and expeditious closing of estates." (*Id.* at pp. 479-480.) "Nonclaim statutes come in two basic forms. Some provide a relatively short time period, generally two to six months, that begins to run after the commencement of probate proceedings. Others call for a longer period, generally one to five years, that runs from the decedent's death." (*Id.* at p. 480.) California has both forms of nonclaim statutes.

First, under the Probate Code, a creditor generally has the later of the following to file a creditor's claim against an estate: (1) four months from when general personal representatives are appointed, or (2) 60 days from when a creditor is served with

notice that the estate is being administered. (Prob. Code, §9100, subd. (a).) "A timely filed [creditor's] claim [against the estate] is a condition precedent to filing an action against a decedent's estate." (*Dobler v. Arluk Medical Center Industrial Group, Inc.* (2001) 89 Cal.App.4th 530, 536.)

Second, Code of Civil Procedure section 366.2 independently requires that any surviving causes of action against a decedent, "whether accrued or not," must be filed against the decedent's estate "within one year after the date of death, and the limitations period that would have been applicable does not apply." (§366.2, subd. (a).) Accordingly, as a general matter, the deadline to sue Jackson's Estate expired on June 25, 2010, one year after Jackson's death.

F. Robson Files A Petition Against Jackson's Estate.

On May 1, 2013, Robson petitioned to file a late creditor's claim against the Estate, claiming Jackson had abused him two decades earlier. (Respondents' RJN 3-23.) About a week later, Robson filed this civil action. (4 AA 4183 [docket showing complaint filed May 10, 2013].)

In order to file a "late claim" against an estate, a petitioner must show, among other things, that he did not have "actual knowledge of the administration of the estate" until 60 days before filing his petition. (Prob. Code, §9103, subd. (a).) Robson

declared under oath that he was unaware of the administration of the Estate until March 4, 2013. (Respondents' RJN 30 ¶27.) During discovery, irrefutable evidence was produced showing that, contrary to Robson's earlier sworn declaration, Robson had "actual knowledge of the administration of the estate" several *years* before he filed his petition. He had even met with one of the Estate's co-executors in 2011, seeking work on one of the Estate's projects. (1 AA 139; 2 AA 618-621; Respondents' RJN 58-65.)

After extensive discovery and briefing, the trial court granted summary judgment for the Estate on Robson's petition to file a late claim. (1 AA 441-458.) The court found that Robson was not entitled to relief under Probate Code section 9103 in light of "undisputed" evidence that Robson knew about the Estate in 2011, and that the Estate was not equitably estopped from relying on the claims filing deadlines. (*Ibid.*)

Robson did not appeal the summary judgment for the Estate, which was entered in May 2015. As the trial court recognized, the disposition of Robson's claims against Jackson and the Estate is therefore final. (4 AA 4048.)

G. Robson Files The Operative Complaint Against The Corporations.

After the court disposed of the claims against the Estate, Robson focused on his complaint against the Corporations.[5]

The operative Fourth Amended Complaint alleges six causes of action: (1) intentional infliction of emotional distress; (2) negligence; (3) negligent supervision; (4) negligent retention/hiring; (5) negligent failure to warn, train, or educate; and (6) breach of fiduciary duty. (1 AA 24-67.) All were based on Robson's allegations that Jackson sexually abused him between 1990-1997 and that some of the Corporations' employees knew or had reason to know of alleged abuse by Jackson but failed to take steps to prevent it. (*Ibid.*)[6]

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[5] This Court summarily denied the Corporations' writ petition challenging the overruling of their demurrer to the Third Amended Complaint. (Cal.Ct.App. No. B268439.)

[6] Although Robson's allegations that the Corporations knew or had reason to know of abuse is not challenged for purposes of this appeal, the Corporations note that *not a single* former employee who Robson cites as claiming to have believed Jackson was acting inappropriately ever went to the police, and *all of them* were paid at least $20,000 each by tabloid television shows in the 1990s to tell their stories, and did so only after being terminated by Jackson or companies associated with him. (See 4 AA 3880 [citing undisputed evidence as to every witness].) As one of Robson's witnesses testified at his deposition in this case, these

(footnote continued)

Relevant to the issues on appeal, Robson's operative complaint alleged that Jackson was both Corporations' "president/owner," and that the Corporations were Jackson's "alter egos." (1 AA 25-26.) The Corporations' answer included a statute of limitations defense. (1 AA 73.)

H. The Trial Court Grants Summary Judgment For The Corporations.

The Corporations sought summary judgment on statute of limitations grounds. (1 AA 84-87.) They relied on Code of Civil Procedure section 340.1, under which claims against third parties for failing to prevent childhood sexual abuse must be brought before the plaintiff's 26th birthday, unless they fall within the narrow exception set forth in section 340.1(b)(2). (1 AA 86.)

The trial court granted summary judgment for the Corporations. (4 AA 4047-4062.) The court's detailed order concluded that Robson's claims were time-barred for two independent reasons: The Corporations did not have a right to control Jackson, and Jackson's exposure to Robson did not arise out of Jackson's relationship with the Corporations. (4 AA 4049-4061.)

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tabloids "wanted us to ['lie or to make stories up'] . . . they pretty much said we could pretty much say anything. Pretty much the way I inter[pre]ted it is that if we could fabricate what it is that we wanted." (2 AA 2107.)

Lack of control. Adhering to the Supreme Court's conclusion that section 340.1(b)(2) extends the statute of limitations past age 26 only as to third parties with some control over the perpetrator, the trial court focused on undisputed evidence that Jackson owned 100% of both Corporations. (4 AA 4052-4053.) Under the Corporations Code, that "complete and total ownership" gave Jackson full control over the Corporations and their boards of directors. Jackson was the only board member until June 1994. The other three board members that Jackson added in June 1994 had no meaningful authority to control Jackson or his access to children—Jackson could remove them without cause and without notice at any time. (4 AA 4053-4056 [any theoretical power to fire or remove Jackson was "illusory"].)[7]

The court also observed that Jackson personally owned the residences where the alleged abuse occurred, meaning the Corporations had no authority to control his visitors. (4 AA 4054.) And evidence that the Corporations' employees assisted Jackson with his personal life "does not create an evidentiary conflict" as to Jackson's control over the Corporations. (4 AA 4057.) "As a

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[7] The trial court sustained a demurrer on similar grounds in James Safechuck's related case against the Corporations. The appeal from that ruling has been consolidated with this one for oral argument. (*Safechuck v. MJJ Productions, Inc.*, No. B284613.)

practical matter, everyone involved worked for Michael Jackson, and he held the ultimate control." (*Ibid.*) "While high-level employees of [the Corporations] may have had authority and control over some lower-level employees, there is no evidence those high-level employees had authority over Michael Jackson." (*Ibid.*)

Finally, the court noted that Robson's argument that the Corporations were Jackson's "alter ego" supports the Corporations, not Robson. The alter ego assertion necessarily concedes that the Corporations "had no existence separate and apart from Michael Jackson," reinforcing that Jackson controlled the Corporations. (4 AA 4058.)

Jackson's access to Robson. Relying on authority interpreting section 340.1(b)(2) to apply only where the plaintiff was exposed to the perpetrator "as an inherent part of the environment created by the relationship between" the perpetrator and the defendant, the court concluded that Robson was not exposed to Jackson as an inherent part of the relationship between Jackson and the Corporations. (4 AA 4059.) The court cited undisputed evidence that Robson met Jackson as a result of a dance contest unconnected to the Corporations, and that it was Robson's mother who reestablished contact with Jackson and who asked Jackson to sponsor Robson's immigration to the United States. (4 AA 4059-4060.) Based on that and other

evidence, the court concluded that the Corporations' "involvement with Michael Jackson and [Robson] was incidental to the alleged sexual abuse." (4 AA 4060.)

Evidentiary rulings. The court granted the Corporations' request for judicial notice and sustained the Corporations' evidentiary objections. (RT 2-3; 4 AA 4022-4028.) The court granted Robson's request for judicial notice of the existence of various documents, but not of the truth of statements therein. (RT 2.) The court overruled most of Robson's evidentiary objections, sustaining just two of them. (RT 3.)[8]

STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo, viewing the evidence, and drawing reasonable inferences therefrom, in the light most favorable to the non-moving party.

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[8] Robson has expressly disclaimed any reliance on the excluded evidence. (AOB 28, fn. 3.) He also has forfeited any challenge to the evidentiary rulings by failing to develop an argument as to why they were an abuse of discretion, or even to specify the evidence at issue and the basis for the objections. (Cal. Rules of Court, rule 8.204(a)(1)(B) [brief must "[s]tate each point under a separate heading or subheading summarizing the point," and "support each point by argument and, if possible, by citation of authority"]; *Villanueva v. City Of Colton* (2008) 160 Cal.App.4th 1188, 1196 [where an opening brief does not challenge the trial court's evidentiary rulings, "'any issues concerning the correctness of the trial court's evidentiary rulings have been waived'"].)

(*Aguilar, supra*, 25 Cal.4th at p. 843.) The judgment must be affirmed if there is no triable issue as to any material fact and the Corporations are entitled to judgment as a matter of law. (§437c, subd. (c).) On appeal from a summary judgment, "the appellant has the burden of showing error, even if he did not bear the burden in the trial court." (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 230.)

ARGUMENT

I. The Trial Court Correctly Determined That Robson's Claims Are Time-Barred: Section 340.1(b)(2) Extends The Limitations Period Only Against Third Parties That Had Some Right To Control The Perpetrator, And The Corporations Had No Such Right.

Robson was 30 years old when he sued the Corporations. (1 AA 24-25, 508-509.) His suit is time-barred unless it falls within a narrow exception to the age 26 cutoff for childhood sexual abuse claims against third-party defendants. (§340.1, subds. (a), (b).) The trial court correctly concluded that the undisputed facts here do not fall within that exception. (4 AA 4047-4063.) Robson's claims are thus time-barred.

A. Robson's Claims Are Time-Barred Unless They Fall Within Section 340.1(b)(2)'s Extended Statute Of Limitations.

Historically, the statute of limitations for civil claims based on childhood sexual abuse was one year, with the statute tolled until the plaintiff turned 18. (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 960-961.) In 1986, the Legislature extended the limitations period for certain types of cases by enacting Code of Civil Procedure section 340.1. The Legislature has since amended section 340.1 several times to enlarge the limitations period and further define its scope. (*Id.* at p. 952.)

The current version of section 340.1 extends the statute of limitations for three categories of childhood sexual abuse claims: (1) actions against the alleged perpetrator/molester (§340.1, subd. (a)(1)); (2) actions against an entity or person that owed a duty of care to the plaintiff, and whose wrongful or negligent act was a legal cause of the abuse (*id.*, subd. (a)(2)); and (3) actions against an entity or person whose intentional act was a legal cause of the abuse (*id.,* subd. (a)(3)).[9]

For actions directly against the alleged perpetrator, the statute of limitations is the later of: (1) the plaintiff's 26th

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[9] For the Court's convenience, the full text of section 340.1, subdivisions (a) and (b) appears at the end of this brief. (Cal. Rules of Court, rule 8.204(d).)

birthday; or (2) three years after the plaintiff discovered or reasonably should have discovered that psychological injury as an adult was caused by the abuse. (§340.1, subd. (a)(1).) Direct perpetrator liability applies only to natural persons, not entities. (*Boy Scouts of America v. Superior Court* (2012) 206 Cal.App.4th 428, 444-445.)

Actions against third-party defendants, i.e., not the actual perpetrator (§340.1, subd. (a)(2), (a)(3)), are subject to a different rule. They must be initiated before the plaintiff's 26th birthday, with no extension for delayed discovery. (§340.1, subd. (b)(1).)

There is just one "narrow exception to the age 26 cutoff for a subcategory of third party defendants." (*Quarry, supra*, 53 Cal.4th at p. 983.) Section 340.1(b)(2) adopts the potentially longer, three-year delayed-discovery period that applies to direct perpetrators, for certain third-party defendants who had both the knowledge and the ability to protect against abusive behavior. (§340.1(b)(2).)

This appeal involves Robson's claims against the Corporations, as third-party defendants. Robson missed the age 26 cutoff by several years. (1 AA 508-509.) His action therefore survives only if it falls within section 340.1(b)(2)'s "narrow exception" to that cutoff.

B. Section 340.1(b)(2)'s Exception To The Age 26 Cutoff Applies Only Where The Defendant Could Exercise Control Over The Perpetrator.

1. By its plain terms, section 340.1(b)(2) applies only to defendants in specific relationships with the perpetrator.

The plain language of section 340.1(b)(2) creates a "*narrow* exception to the age 26 cutoff for a *subcategory* of third party defendants." (*Quarry, supra*, 53 Cal.4th at p. 983.) The perpetrator must have been the third-party defendant's "employee, volunteer, representative, or agent." (§340.1(b)(2).) And, the third-party defendant must have known or had reason to know of prior unlawful sexual misconduct by the perpetrator, and "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." (*Ibid.*)

2. Courts have uniformly concluded that section 340.1(b)(2)'s limitation to certain relationships implicitly requires that the third-party defendant had a right to control the perpetrator.

Courts have uniformly interpreted section 340.1(b)(2) as applying only to third-party defendants that could have imposed reasonable safeguards "'*by virtue of* '" their relationship with the perpetrator. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543, italics added, quoting *Aaronoff v. Martinez-Senftner* (2006) 136 Cal.App.4th 910, 921; see also *Joseph v. Johnson* (2009) 178 Cal.App.4th 1404, 1412.) As the Supreme Court has explained, section 340.1(b)(2)'s "enumeration of the necessary relationship between the nonperpetrator [i.e., third-party] defendant and the perpetrator implies that the former was in a position to exercise some control over the latter." (*Doe v. City of Los Angeles*, *supra*, 42 Cal.4th at p. 544.)

The Supreme Court's textual reading is correct. The relationships specified in section 340.1(b)(2) share a common feature: employees, volunteers, representatives and agents are all subservient positions, under the control of another (i.e., the third-party defendant). Section 340.1(b)(2) does *not* list any relationship with the opposite power dynamic, i.e., where the perpetrator controls the third-party defendant. Its express terms

do not, for example, cover a third-party defendant who was the perpetrator's employee or agent. This distinction reflects a legislative intent to limit section 340.1(b)(2) to situations where *it is the perpetrator's subservient relationship to the third-party defendant* that provides the third-party defendant with the ability "to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by" the alleged perpetrator. (§340.1(b)(2).)

Section 340.1(b)(2)'s sole example of a reasonable preventative step that the third party could have taken further demonstrates a legislative intent to target only third-party defendants that had a right to control the perpetrator: Such measures "includ[e], but [are] not limited to, preventing or avoiding placement of [the perpetrator] in a function or environment in which contact with children is an inherent part of that function or environment." (§340.1(b)(2).) Selecting the perpetrator's "function or environment" requires having control over the perpetrator.

Joseph v. Johnson, supra, 178 Cal.App.4th 1404 illustrates how this control requirement works in practice. The plaintiffs there alleged that their former babysitter knew her husband had a history of abusing children, but nonetheless delegated her babysitting duties to him and then failed to take reasonable steps to prevent him from sexually abusing them. (*Id.* at pp. 1408-

1409.) *Joseph* held that section 340.1(b)(2) did not apply because the delegation of babysitting duties did not "provide [the defendant] *with control over [her husband's] conduct*," or "give [the defendant] *the right to control* [her husband's] conduct." (*Id.* at p. 1412, italics added.)

Joseph found it irrelevant that the defendant could have prevented the abuse by not leaving her husband alone with the children she was babysitting: "[T]he fact that [the defendant] might not have permitted [the perpetrator] to be alone with the plaintiffs does not mean that she had the *right to control his behavior*," which is what section 340.1(b)(2) requires. (*Ibid.*, italics added; see also *Aaronoff, supra*, 136 Cal.App.4th at p. 921 ["the third party must be in such a relationship with the perpetrator as to have *some control over the perpetrator*," italics added]; *Dutra v. Eagleson* (2006) 146 Cal.App.4th 216, 228 [section 340.1(b)(2) inapplicable where allegations did not establish third-party defendant "was in a position to control [the perpetrator's] conduct"].)

The courts' uniform interpretation of section 340.1(b)(2) is consistent with the events that motivated the Legislature to enact section 340.1(b)(2) in 2002 to further extend the limitations period as to a *subset* of defendants. The changes occurred "in the wake of public exposure of sexual abuse by priests against

children that had been condoned and covered up by the Catholic Church." (*Quarry, supra*, 53 Cal.4th at p. 988.)

Cases of childhood sexual abuse involving churches or schools fit neatly within 340.1(b)(2), as interpreted by the courts. Churches and schools are hierarchical organizations. When Church leadership learns that a priest has committed abuse, the hierarchical structure allows the leadership to implement increasingly strict safeguards such as: requiring other adults to be present when the priest is around children; reassigning the priest to a role not involving children; or removing the priest from the Church altogether. The Church, thus, can take many steps to prevent its priests from abusing children "'*by virtue of*'" its relationship to the priests. (*Doe v. City of Los Angeles, supra*, 42 Cal.4th at p. 543, italics added.)

Likewise, a school can terminate or restrict a potentially predatory teacher or administrator "'by virtue of'" its control over the teacher or administrator—schools have power to fire teachers and administrators, reassign them, or impose other conditions on their interactions with children. The same is true of daycare centers and youth organizations like the Boy Scouts, which also fit comfortably within section 340.1(b)(2).

But the claims here—alleging abuse by the Corporations' sole owner and "alter ego"—are far afield from abuse by a priest,

teacher, or scoutmaster within a hierarchical organization and do not fall under the plain language of section 340.1(b)(2).

3. The trial court did not err in limiting section 340.1(b)(2) to third-party defendants with control over the perpetrator.

Robson argues that section 340.1(b)(2) does not include any right-to-control requirement. In his view, section 340.1(b)(2) broadly applies to any third-party defendant that *theoretically* could have taken measures to prevent abuse, even if the only available measures had nothing to do with the third-party defendant's relationship with, and ability to control, the perpetrator. For example, under his interpretation, section 340.1(b)(2) would apply if the only theoretically-preventative measure available was calling law enforcement or warning others.

Robson's interpretation of the statute makes little sense. Because Jackson controlled the Corporations as their sole owner, Robson's interpretation effectively would require Jackson to have directed those working for him to warn others that *he* was potentially a criminal of the highest order, and to educate his employees on *how to report him to the police*. Implementation of such a "step" or "safeguard" is not "reasonable." (§340.1(b)(2).) And courts should not presume that the Legislature would

require such extraordinary measures—which raise Fifth Amendment concerns—without expressly saying so. (See *Kassey S. v. City of Turlock* (2013) 212 Cal.App.4th 1276, 1280 [imposing a duty on a mandatory reporter to self-report would violate constitutional guarantee against self-incrimination].)

Likewise, Robson's interpretation would likely bring *all* negligence actions against third-party defendants with alleged knowledge of past abuse within the scope of section 340.1(b)(2), contrary to the Supreme Court's characterization of that subdivision as creating a "*narrow* exception" to the age 26 cutoff. (*Quarry, supra*, 53 Cal.4th at p. 983, italics added.)

Regardless, the trial court was not writing on a blank slate, and this Court need not decide these issues as a matter of first impression. The scope of section 340.1(b)(2) has been addressed repeatedly by the California courts, and they uniformly agree with the trial court's interpretation of the statute as requiring a third-party defendant to have a degree of control over the alleged perpetrator.

a. Case law.

Robson does not cite a single case supporting his interpretation of section 340.1(b)(2) or casting doubt on *Doe v. City of Los Angeles, Aaronoff*, or *Joseph*. Instead, he attempts to distinguish those cases. (AOB 45-55.) But Robson fails to

establish any reasoned basis for departing from the uniform case law in this area.

Aaronoff v. Martinez-Senftner

Aaronoff held that section 340.1(b)(2) did not apply to a plaintiff's claim that her mother failed to prevent her father from abusing her, even though the plaintiff alleged that she was her parents' employee at a car dealership and that her father was her mother's business partner and agent. (136 Cal.App.4th at pp. 921-922.) *Aaronoff* reached that result based on a close reading of section 340.1(b)(2)'s language, which led it to conclude that the statute applies "to third party defendants who, *by virtue of certain specified relationships to the perpetrator* . . . could have employed safeguards to prevent the sexual assault." (*Id.* at p. 921, italics added.) The Supreme Court later agreed that "[t]he language of the provision expressly supports this characterization." (*Doe v. City of Los Angeles, supra*, 42 Cal.4th at p. 543.)

Robson emphasizes *Aaronoff*'s further observation that section 340.1(b)(2) "'requires the sexual conduct to have arisen through an exploitation of a relationship over which the third party has some control.'" (AOB 48, quoting 136 Cal.App.4th at p. 921.) He says this means that the defendant need only control the circumstances of *the relationship*, not the perpetrator. (AOB 49.) But *Aaronoff*'s very next sentence belies Robson's

gloss: "In other words, [1] the perpetrator's access to the victim must arise out of the perpetrator's employment with, representation of, agency to, etc., the third party, and [2] *the third party must be in such a relationship with the perpetrator* as to *have some control over the perpetrator."* (136 Cal.App.4th at p. 921, italics added.)

Robson offers no support for his position that *Aaronoff* does not mean what it says, or any basis for disregarding its analysis. Nor is there one, given that the Supreme Court endorsed *Aaronoff*'s other statements to the same effect, i.e., that section 340.1(b)(2) is limited to defendants who could have taken preventative steps "'*by virtue of*'" their relationship with the perpetrator. (*Doe v. City of Los Angeles, supra*, 42 Cal.4th at p. 543.)

Doe v. City of Los Angeles

Emphasizing that *Doe v. City of Los Angeles*, *supra*, 42 Cal.4th at p. 543, quoted *Aaronoff*'s statement that section 340.1(b)(2) "'requires the sexual conduct to have arisen through an exploitation of a relationship over which the third party has some control,'" Robson argues that third-party defendants need only control "the context in which the perpetrator and the child are brought together," not the perpetrator himself. (AOB 46-47, italics omitted.)[10]

The rest of the *Doe* paragraph that Robson relies on belies his claim: *Doe* also approvingly quoted *Aaronoff*'s statement that section 340.1(b)(2) targets third-party defendants that could have employed safeguards "'*by virtue of* certain specified relationships to the perpetrator,'" and concluded that "[t]he statute's enumeration of the necessary relationship between the nonperpetrator defendant and the perpetrator implies that *the former was in a position to exercise some control over the latter*." (42 Cal.4th at pp. 543-544, italics added.) *Doe* thus establishes that what matters is the third-party defendant's relationship with, and ability to control, *the perpetrator*. Absent that control, it

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[10] Although this interpretation of the statute is erroneous, the undisputed evidence compels a conclusion that the Corporations did *not* control "the context in which [Jackson] and [Robson] [we]re brought together." (See pp. 69-74, *post*.)

is not enough that the third-party defendant could control the alleged victim, or was incidentally involved in the relationship between the perpetrator and the alleged victim.

Nor can *Doe*'s statutory interpretation be tossed aside by labeling it dicta. (AOB 45-46.) The Supreme Court's dicta is "highly persuasive" (*Gonzalez v. Mathis* (2018) 20 Cal.App.5th 257, 273 fn. 1) and, as discussed above, the Court's textual analysis is well-founded. Robson has not identified any reason to depart from it.

Joseph v. Johnson

Joseph, supra, 178 Cal.App.4th 1404 held that section 340.1(b)(2) did not apply to a claim against a babysitter who delegated her babysitting duties to her husband. (See pp. 37-38, *ante*.) Robson relegates his discussion of *Joseph* to a footnote, where he portrays *Joseph* as based solely on the plaintiffs' failure to allege an agency or employment relationship. (AOB 50, fn. 5.) That is neither a fair nor complete reading of the case. *Joseph* made clear that section 340.1(b)(2) requires control over the perpetrator: "The negligence claims fail for lack of factual allegations demonstrating the requisite relationship between [the defendant] and [the perpetrator] *that would provide [the defendant] with control over [the perpetrator's] conduct*." (178 Cal.App.4th at p. 1412, italics added.)

Robson also emphasizes that *Joseph* involved "an informal babysitting relationship"(AOB 50, fn. 5), but he does not explain why that makes *Joseph*'s statutory interpretation any less relevant. Nor could he. Section 340.1(b)(2) does not differentiate between "formal" and "informal" employees, volunteers, or agents. Moreover, *Joseph* expressly stated that section 340.1(b)(2) would not apply even to a "professional babysitter" who delegated responsibility to a perpetrator, "absent allegations showing that [the professional babysitter] *had the right to control the conduct of the person who assumed their duties*." (178 Cal.App.4th at p. 1412, italics added.)

Coit Drapery Cleaners, Inc. v. Sequoia Ins. Co.

There is no merit to Robson's claim that the trial court "relied on" on *Coit Drapery Cleaners, Inc. v. Sequoia Ins. Co.* (1993) 14 Cal.App.4th 1595, "to find that the only 'reasonable' step or safeguard to prevent sexual abuse" is firing or disciplining the perpetrator. (AOB 53.) The trial court relied on *Doe, Aaronoff,* and *Joseph* in concluding that section 340.1(b)(2) requires the defendant to have had control over the perpetrator. (4 AA 4051-4053.) The court then analyzed whether the Corporations had the requisite control over Jackson. Only in that context did the court cite *Coit*, which the court described as recognizing, "in a dictum . . . the futility of a corporation controlling the behavior of

a majority shareholder." (4 AA 4054.) There was nothing wrong with that common-sense observation.

b. Legislative history.

Robson's references to section 340.1(b)(2)'s legislative history do not show any error in the California courts' uniform conclusion that section 340.1(b)(2) applies only to third-party defendants who had an ability to control the perpetrator, by virtue of their relationship with him.

Robson's quotes from proponents of the 1998 amendment that imposed an absolute age 26 cutoff for claims against third-party defendants (AOB 34-35) shed no light on the scope of section 340.1(b)(2), which wasn't added until 2002. A 2002 Senate Judiciary Committee report's observation that a perpetrator may be dead or judgment-proof by the time an alleged victim decides to sue (AOB 36) is equally unilluminating. Despite posing those hypotheticals, the Legislature did not amend the Probate Code claims filing requirements or Code of Civil Procedure section 366.2 to extend the statute of limitations against a decedent's estate, nor did it expand the statute of limitations for *all* third-party defendants, or even for third-party defendants where the perpetrator cannot be sued. Instead, it enacted section 340.1(b)(2), with its requirement that the third-party defendant have been in a particular relationship with the perpetrator.

Also unavailing is the 2002 Senate Judiciary Committee report's citation to *Duffy v. City of Oceanside* (1986) 179 Cal.App.3d 666 for the proposition that an employer who knew of an employee's prior bad acts may be held liable for failing to warn or take precautions. (AOB 54.) The third-party defendant in *Duffy* (a city) had a right to control the perpetrator (an employee in the city's engineering department). (*Duffy, supra*, 179 Cal.App.3d at p. 669.) A legislative history reference to *Duffy* therefore does not indicate that the Legislature intended section 340.1(b)(2) to apply where such control is lacking.[11]

Nor does it matter that section 340.1(b)(2) is a remedial statute to be construed broadly. (AOB 37.) *Doe v. City of Los Angeles*, the case Robson cites for this proposition, *rejected* an expansive reading of section 340.1(b)(2) (particularly, its notice requirement), affirming the dismissal of the plaintiffs' claims as untimely. (42 Cal.4th at pp. 542-552.) *Doe* demonstrates that a

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[11] The Senate Judiciary Committee report's description of *Duffy* is also inaccurate. The report stated that *Duffy* held the employer "liable for failing to warn female employees that a male coemployee was a convicted rapist." (Appellant's RJN, Exh. C, p. 25.) But *Duffy* did not hold that there was a duty to warn all female employees—it rejected a generalized duty to warn, holding only that there may have been a duty to warn a specific female employee after she reported to supervisors that the perpetrator had sexually harassed her. (*Duffy, supra*, 179 Cal.App.3d at pp. 674-675.)

general principle of broad construction is not dispositive; courts still must carefully analyze the meaning of the specific provision at issue. The Supreme Court reinforced this point again several years later, holding that despite section 340.1's "important remedial purpose," its provision for reviving lapsed claims was not susceptible to the plaintiff's proffered broad reading. (*Quarry, supra*, 53 Cal.4th at pp. 988-989.) As the Court observed, "the legislative expansion of the limitations period has been measured and deliberate," and "[r]eliance upon the general purpose of [an] enactment . . . does not alter the circumstance" of how the Legislature chose to deal with a particular problem. (*Ibid.*)

C. That Jackson Wholly Owned Both Corporations Establishes That The Corporations Had No Authority To Control Him.

The trial court correctly concluded that section 340.1(b)(2) does not apply here because the undisputed facts establish that Jackson controlled the Corporations, not the other way around.

It is undisputed that Jackson was the sole owner of both Corporations throughout his life. (1 AA 509, 516; see also 1 AA 140, 142 [declaration regarding ownership].) As the Corporations' 100% shareholder, Jackson had complete control over all corporate activities, as a matter of basic corporate law.

A corporation's business and affairs are managed by its board of directors, which, in turn, chooses the corporation's

officers. (Corp. Code, §§300, subd. (a), 312, subd. (b).) As both Corporations' 100% shareholder, Jackson had the sole power to elect the Corporations' boards, and to remove any director with or without cause. (Corp. Code, §§603, subd. (d) [board may be elected "by unanimous written consent of all shares"], 303, subd. (a) ["[a]ny or all of the directors may be removed without cause if the removal is approved by the outstanding shares"].) Jackson also had the statutory right to act as the sole member of the board of both Corporations, as he did for most of the time period here. (*Id.*, §212, subd. (a).) Thus, the entire board of both Corporations—and, by extension, the Corporations' officers—were entirely within Jackson's control.

Jackson's absolute control over the Corporations means that even if he was *nominally* the Corporations' "employee" or "agent" (as Robson contends), the Corporations did not have the ability to implement measures to prevent the alleged molestation "'by virtue of'" any such relationship. (*Doe v. City of Los Angeles, supra*, 42 Cal.4th at p. 543.) The Corporations' relationship with Jackson did not give them any control over him—particularly not at the places where Robson contends the abuse occurred, such as Jackson's personal residences, a third-party recording studio, and the Robson family's condo. (E.g., 1 AA 521, 522; 3 AA 3160-3162, 3167-3168.) Indeed, the fact that the Corporations had no ownership interest in any of Jackson's residences (1 AA 143-144)

further supports the trial court's conclusions that they "had no authority over those assets including controlling ingress and egress, who visited Michael Jackson, or procedures to govern Michael Jackson's arrival or departure at the real properties." (4 AA 4054.)

Robson and his mother's observations reinforce Jackson's sole control. For example, Robson described the Ranch—where abuse allegedly occurred—as "impenetrable Michael Jackson country governed by one man only, Michael Jackson," and described the Ranch as "governed by [Jackson's] own rules. A world that HE could control." (1 AA 524-525; 3 AA 3139, emphasis in original; 1 Unredacted AA 4251, 4263.) Likewise, Robson's mother testified that "in order to remain [Jackson's] friend, you had to abide by *his rules*." (3 AA 3427, italics added.) Robson's mother knew very little about the nature of the Corporations other than the fact that they were Jackson's companies. (1 AA 292-293, 3 AA 3433-3434.)

Finally, Robson's assertions that the Corporations were Jackson's "alter egos" (1 AA 26, 500-501) are an admission that Jackson had complete control over the Corporations. Indeed, in opposing summary judgment, Robson argued that *Jackson's own purported failure to protect Robson from Jackson himself* should be imputed to the Corporations based on the alter ego doctrine. (1 AA 500-501.) Robson claimed there was a clear "unity of

interest and ownership between [the Corporations] and Jackson *such that their separate personalities did not in reality exist*." (1 AA 501, italics added.) But as the trial court explained, under Robson's theory that the Corporations "had no existence separate and apart from Michael Jackson," Jackson necessarily had "complete control and authority over the [Corporations]." (4 AA 4058.) In light of that complete control, allowing Robson's claim against the Corporations under section 340.1(b)(2) would destroy any distinction between claims against the perpetrator and claims against third parties that failed to prevent the abuse. It also would be tantamount to holding that Jackson had to take steps to prevent himself from engaging in abuse, and would allow an end-run around Robson's failure to bring a timely claim against Jackson and his Estate. There is no support in section 340.1(b)(2) for that result.

D. The Opening Brief Does Not Identify Any Material Factual Dispute Regarding Control.

1. Robson's assertion that the Corporations had a duty to protect him is irrelevant to the issue on appeal.

Robson argues that the Corporations had an affirmative duty to protect him because he, as their minor employee, had a "special relationship" with them. (AOB 37-40.) Even *if* true, the point is irrelevant. The Corporations did not seek summary

judgment based on a lack of duty; they sought, and won, summary judgment because Robson's claims do not fall within section 340.1(b)(2), and thus are untimely. (AOB 37; 1 AA 85; 4 AA 4048, 4058.) This Court need not reach the duty issue because although the existence of a duty is often necessary to trigger section 340.1(b)(2), it is not *sufficient*—the third-party defendant *also* must have had control over the perpetrator, and that control is missing here.

Robson's operative complaint alleges four negligence causes of action based on the Corporations' alleged failure to prevent childhood sexual abuse. (1 AA 24.) The statute of limitations for negligent failure to prevent abuse is set by several interrelated provisions of section 340.1. Section 340.1(a)(2) initially requires a negligence action "against any person or entity who owed a duty of care to the plaintiff" to be brought by the later of the plaintiff's 26th birthday or three years after the plaintiff reasonably should have discovered an injury caused by sexual abuse. Section 340.1(b)(1) modifies that rule: "No action described in [section 340.1(a)(2)] may be commenced on or after the plaintiff's 26th birthday." Finally, section 340.1(b)(2) restores the possibly-longer 3-years-from-discovery limitations period for a *subset* of section 340.1(a)(2) negligence claims meeting certain criteria—namely, claims where a third-party defendant "knew or had reason to know" of "unlawful sexual conduct by an employee,

volunteer, representative or agent," and "failed to take reasonable steps, and to implement reasonable safeguards, to avoid" future sexual misconduct. (§340.1(b)(2).)

Under this framework, section 340.1(b)(2)'s extended limitations period applies to Robson's negligence claims only if the Corporations owed Robson a duty of care. But a duty of care does not carry the day. Robson's claims *also* must meet the specific criteria in section 340.1(b)(2). The trial court correctly found that Robson's claims falter at that step, because the Corporations had no right to control Jackson. That lack of control renders section 340.1 inapplicable *even if* the Corporations owed Robson a duty of care. Robson has not cited any authority to the contrary. This Court therefore need not, and should not, reach the duty question.

Joseph, supra, 178 Cal.App.4th 1404, is again illustrative. The *Joseph* plaintiffs alleged that the defendant delegated her babysitting duties to her husband with knowledge of her husband's predatory conduct. (*Id.* at pp. 1408-1409.) Those allegations appear to constitute a viable negligence theory against the defendant. Indeed, *Joseph* acknowledged that the allegations "bring plaintiffs' claims within subdivision (a)(2) of section 340.1." (*Id.* at p. 1412.) But *Joseph* nonetheless affirmed the dismissal of the claims against the third-party defendant, because she had no "right to control" the alleged perpetrator as

required to fall within section 340.1(b)(2). (*Ibid.*) The *otherwise viable* negligence claims were time-barred because they were brought after plaintiffs' 26th birthday. (*Ibid.*) Duty is not enough; there also must be control.

2. Whether the Corporations' employees made logistical arrangements for some of Jackson's time with Robson at Jackson's direction is irrelevant.

Robson asserts that the Corporations' employees handled travel logistics, sent gifts and notes to Robson, and kept their distance when Jackson was with Robson. (AOB 40-43, 47, 55.) Based on these allegations, Robson argues that "instead of facilitating Michael Jackson's sexual abuse of Plaintiff, [the Corporations] could have taken some action to try and prevent it." (AOB 44.)

This argument is misdirected. The material question for purposes of section 340.1(b)(2) is not whether the Corporations could have taken "some action"; it is whether the Corporations were in a position to control Jackson. (Pp. 36-40, *ante*; *Joseph*, *supra*, 178 Cal.App.4th at p. 1412 [requiring a "right to control [the perpetrator's] conduct"]; *Dutra*, *supra*, 146 Cal.App.4th at p. 229 [same]; *Aaronoff*, *supra*, 136 Cal.App.4th at pp. 921-922 [same].) That lower-level employees followed Jackson's directions to make logistical arrangements for some of Jackson's time with

Robson (and, often, his family) does not change the Corporations' dispositive lack of control over Jackson, nor does any *alleged* use of corporate funds to settle civil disputes.[12]

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[12] Despite asserting that the Corporations "repeatedly" used funds from their accounts to pay civil settlements (AOB 24, 42), the only record citation the Opening Brief provides for that proposition that even mentions a civil settlement is Blanca Francia's testimony that MJJ Productions paid a settlement to her son. (*Ibid.*, citing 2 AA 1324-1325.) Robson's own trial court filings belie that claim: There, Robson asserted that "*Jackson*" paid the settlement. (1 AA 489, 560-561.) Had Robson asserted in the trial court that MJJ Productions paid the settlement, the Corporations would have objected that Ms. Francia's deposition testimony lacked foundation (as they did at her deposition, see 2 AA 1327); and would have pointed out that Ms. Francia's son (the alleged payee) did not testify that MJJ Productions paid him; he did not even know what MJJ Productions was. (4 Unredacted AA 5245-5246.) And although Robson *asserted* in the trial court that "Defendants" paid a settlement relating to a Jane Doe in the early 1990s (1 AA 489), the "evidence" cited for that assertion does not support it. Robson simply pointed to photocopies of what appear to be redacted checks. (1 AA 489, citing "PMF [Plaintiff's Material Fact] 54," which in turn cites Ex. RR [4 AA 3821-3826].) But Robson did not authenticate those documents. His counsel merely declared that they are copies of checks "to Jane AA Doe and/or Jane AA Doe's then-boyfriend," saying *nothing* about their purpose, much less that they were intended to settle civil claims. (2 AA 591.) Indeed, counsel does not even explain who "Jane AA Doe and/or Jane AA Doe's then-boyfriend" are (not their names necessarily, but the context of who they were). And counsel does not explain how he would have *personal knowledge* that the

(footnote continued)

Multiple contentions in Robson's opening brief are also contrary to the undisputed facts. For example, the Corporations did not "orchestrate[]" Robson's introduction to Jackson (AOB 40). It is undisputed that Robson met Jackson because Robson's mother entered him into a dance contest sponsored by Target, Pepsi, and CBS in 1987. (1 AA 239, 528.) Robson performed on stage with Jackson the next night. The following night, Robson and his mother sought out and spent time with Jackson at his hotel. (1 AA 243, 528-529.) There is no evidence that the Corporations played any part in this introduction. The Corporations had nothing to do with Jackson's tours, and MJJ Ventures did not even exist at the time. (1 AA 141, 143, 516.)

Robson's opening brief also states that Staikos "arranged for Plaintiff and his family to come to the United States for the meeting at Record One." (AOB 63.) Not true. It is undisputed that Robson and his family traveled to the United States because Robson's talent school was performing at Disneyland. (1 AA 246-247, 529.) Because they were coming to Los Angeles, Robson's mother sought out Jackson by calling numbers she tracked down—and only *after* they arrived in Los Angeles did Robson's mother reach Jackson's personal assistant, Staikos. (1 AA 530.)

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documents are in fact copies of checks made out to her or her "boyfriend" (or what purpose they served).

Through Staikos, Jackson invited the family to visit him at Record One, where Jackson then invited them to the Ranch for the weekend. (1 AA 249, 530.)

In any event, there is no support in either the statute or the case law for applying section 340.1(b)(2) based on a low level-employee following her boss's instructions to arrange meetings or travel logistics, send gifts, or not to monitor him in his own home.

3. Robson's argument that the Corporations could have taken steps to prevent abuse without controlling Jackson is misplaced.

Jackson contends that even if the Corporations could not control Jackson, they could have "take[n] reasonable steps and implement[ed] reasonable safeguards" to protect Robson within the meaning of section 340.1(b)(2) by refusing to make travel arrangements for Robson, warning Robson and his parents about the potential for sexual abuse, or reporting Jackson to law enforcement. (AOB 40, 42-43, 55.) Robson's contention proves too much.

Warning or reporting are steps that *anyone*, anywhere could take upon learning that someone may have a history of abuse. Because these proffered safeguards are not tied to the Corporations' relationship with Jackson, they do not trigger section 340.1(b)(2). As the Supreme Court has explained, the "purpose" of section 340.1(b)(2) is to target "'third party

defendants who, *by virtue of certain specified relationships to the perpetrator* . . . could have employed safeguards to prevent the sexual assault.'" (*Doe v. City of Los Angeles, supra*, 42 Cal.4th at p. 543, italics added; see also *Joseph, supra*, 178 Cal.App.4th at p. 1412; *Aaronoff*, *supra*, 136 Cal.App.4th at p. 921.)[13]

Any contrary interpretation would be nonsensical. Section 340.1(b)(2) requires companies "to take *reasonable* steps, and to implement *reasonable* safeguards." (Italics added.) It would not be "reasonable" to require low-level employees to put their jobs on the line by refusing instructions from a corporate owner over whom they have no control, or reporting him to authorities—simply because they suspect he was guilty of abuse in the past. In such situations, the remedy is not to extend the statute of limitations indefinitely against corporations, but rather to hold the perpetrator/owner liable directly. Robson cannot pursue that

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[13] The measures Robson advocates—reporting Jackson to Robson's family or to law enforcement—would also face serious causation challenges. Robson alleges that he spent time with Jackson, and that Jackson continued to molest him, even after Jackson *was* reported to law enforcement. Robson and his mother knew by January 1994 that a grand jury was investigating claims that Jackson had molested another boy. (1 AA 509, 534; 3 AA 3330-3331 [Robson's mother testified before a grand jury in February 1994 and was deposed in the civil suit in January 1994].) The Robsons remained friends with Jackson despite the allegations against him. Robson's mother believed Jackson was innocent; she "automatically trusted" him. (1 AA 534.)

route here because he waited almost four years after Jackson's death to bring his claims and thereby missed the Probate Code's claims filing deadlines. But Robson's delay, and the procedural consequence thereof, do not warrant contorting the statute as Robson advocates here, or applying it to situations that its plain language cannot support.

4. The expansion of the Corporations' boards of directors in 1994 does not create a genuine dispute of material fact.

Jackson expanded the Corporations' boards of directors to four members in June 1994, more than four years after he allegedly began molesting Robson. (1 AA 513, 518, 530-531.) Robson contends that the expanded boards could have controlled Jackson because the Corporations' bylaws permitted removing Jackson by majority vote or implementing other safeguards. (AOB 56.) As the trial court found, the board expansion does not raise a triable issue of fact. (4 AA 4056-4057.)

"There is a genuine issue of material fact if, and *only if*, the evidence would allow a *reasonable* trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra*, 25 Cal.4th at p. 845, italics added.) It is undisputed that Jackson continued to own 100 percent of Corporations' shares after he expanded the boards. (1 AA 509, 516.) As discussed

above, that 100% ownership meant that Jackson retained ultimate control over the other board members. He could remove any or all of them without cause and without notice. (Pp. 49-50, *ante*; Corp. Code, §§303, subd. (a), 603, subd (a).) As the trial court found, that ultimate control renders the board's power over Jackson "illusory." (4 AA 4056.)

Robson never addressed this point in the trial court. (4 AA 4056 [summary judgment order: "Jackson's authority under the Corporate Code is not addressed by plaintiff"].) On appeal, he argues that the trial court resolved a factual dispute against him, arguing that whether Jackson would *object* to being removed or restricted is "speculative." (AOB 56.) Robson's argument misses the point. Jackson would have to *consent* to any attempt by the board to remove or restrict him, given his ultimate power to remove all other board members at any time for any reason. Thus, the Corporations necessarily had no authority to remove or otherwise control Jackson. Moreover, the idea that Jackson would be fired from his *own personal services companies*, which existed solely to furnish his services as a recording artist and joint venture partner, makes no sense. (1 AA 511, 517, 535; see also 1 AA 141, 143.) Only *reasonable* inferences need be drawn on summary judgment. (See, e.g., *Central Laborers' Pension Fund v. McAfee, Inc*. (2017) 17 Cal. App. 5th 292, 330 [trial court need not accept "highly speculative" inferences of how board might have

acted in hypothetical situation].) And no *reasonable* trier of fact could find that the three board members Jackson appointed could have fired Jackson or restricted his interactions with children at his personal residences.

Equally meritless is Robson's assertion that MJJ Productions employee Staikos's instructions to employees trumped Jackson's. (AOB 23.) The trial court sustained an objection to the sole testimony Robson cites for that assertion (4 AA 4057-4058), and the opening brief did not develop any challenge to that ruling. Accordingly, the evidence is deemed "to have been 'properly excluded,'" and this Court may not consider it. (*Villanueva*, *supra*, 160 Cal.App.4th at p. 1196.)

5. *Communist Party v. 522 Valencia* is inapposite.

Finally, Robson's argument that the Corporations are trying to take advantage of their corporate form to escape liability does not withstand scrutiny. The case on which Robson relies, *Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980 (AOB 57-59), has no bearing on the issues here.

Communist Party rejected the Party's attempt to wrest control of assets held by two corporations that the Party had set up and treated as separate entities. (35 Cal.App.4th at p. 994.) The Party contended that the two corporations' boards had

secretly promised to manage them for the Party's benefit, and therefore the Party was the corporations' alter ego and entitled to control their assets. (*Ibid.*) The court rejected the Party's invocation of the alter ego doctrine. Setting aside the fact that the alleged secret agreement was void and unenforceable, the alter ego doctrine is designed to protect the rights of third parties, not to "unite two separate entities with *opposing* interests for the benefit of the one claiming to control the other." (*Id.* at p. 995, italics in original.)

This case is far afield from *Communist Party*. The Corporations have never argued that their separate corporate identities should be disregarded. For example, Jackson is deceased, but the Corporations do not argue that Code of Civil Procedure section 366.2's statute of limitations, which applies to Jackson's Estate, should apply to them too. Indeed, by debating whether or not section 340.1(b)(2) applies, both the Corporations and Robson are acknowledging the Corporations' corporate form and starting from an assumption that the Corporations have a legal identity separate from Jackson. (See 1 AA 100.)

Moreover, *it was Robson*, not the Corporations, who argued to the trial court that the Corporations were Jackson's alter ego, such that "their separate personalities did not in reality exist." (1 AA 501.) Robson has since abandoned his "alter ego" argument, perhaps in light of the trial court's observation that

it undermined Robson's position instead of supporting it. (4 AA 4058.)

Finally, undisputed facts negate the implication in Robson's opening brief (AOB 58) that the Corporations' separate corporate form is designed to insulate them from liability. Robson had until his 26th birthday—nearly two decades after the abuse allegedly began—to bring this lawsuit against the Corporations. (§340.1(b)(1).) Had he done so, control would not be an issue because Robson would not have needed section 340.1(b)(2)'s exception to the age 26 cutoff. More fundamentally, if Jackson were alive today, Robson likely could have sued him individually. In that case, there would be no need to name the Corporations as defendants at all. If Robson prevailed against Jackson, he could enforce any judgment he obtained against all of Jackson's assets, including all stock in the Corporations (and, hence, all their assets). Accordingly, there is simply no basis for Robson's suggestion that affirming the trial court's ruling would allow perpetrators to "*subjectively* organize[]" corporations in such a way as to avoid liability for their conduct or deprive victims of sexual abuse of any remedy. (AOB 50, italics in original.)

II. Independently, The Judgment Also Must Be Affirmed Because Jackson's Access To Robson Did Not Arise Out Of The Corporations' Relationship With Jackson.

The Corporations' lack of control over Jackson compels affirmance, with no need for further analysis. But there is also a second, independent ground for affirmance. As the trial court found, section 340.1(b)(2) also does not apply because Jackson's access to Robson did not arise out of the Corporations' relationship with Jackson. (4 AA 4060.)

A. Section 340.1(b)(2) Only Applies Where The Perpetrator's Access To The Plaintiff Arose Out Of The Perpetrator's Employment By The Third-Party Defendant.

In addition to requiring a third-party defendant with control over the perpetrator, section 340.1(b)(2) also requires that "the perpetrator's access to the victim must arise out of the perpetrator's employment with, representation of, agency to, etc., the third party [defendant] . . . ." (*Aaronoff*, *supra*, 136 Cal.App.4th at p. 921.) Put another way, "[t]he 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." (*Ibid.*) The statute, thus, "applies to assaults that are related to the perpetrator's employment, or that

are made more likely by the nature of the perpetrator's work and the fact of the perpetrator's continued employment." (*Id.* at pp. 922-923.)

This requirement, like the control requirement, flows directly from the language of section 340.1(b)(2). The Legislature limited section 340.1(b)(2) to abuse by the third-party defendant's employee, agent, volunteer, or representative. (§340.1(b)(2).) Implicit in that limitation is that third-party defendants should face an expanded statute of limitations only where the perpetrator's conduct related to his status as an employee, agent, volunteer, or representative—in other words, where that status gave the perpetrator access to the victim. Otherwise, there would have been no reason to restrict section 340.1(b)(2) to certain categories of relationships.

That the Legislature intended to restrict section 340.1(b)(2) to such exposure is also apparent from the context in which section 340.1(b)(2) was enacted—namely, the Catholic Church abuse scandals. (*Quarry, supra*, 53 Cal.4th at p. 988.) Children are exposed to priests "as an inherent part of the environment created by the relationship between" priests and the Church. (*Aaronoff, supra*, 136 Cal.App.4th at p. 921.) The priest's relationship with the Church inherently creates a reason to trust the priest. A parent may trust a priest to be alone with her child because the priest is imbued with the imprimatur of the Church.

The same is true for the relationship among schools, teachers, and students, and among the Boy Scouts, troop leaders, and scouts. Parents may inherently trust teachers and troop leaders because they are imbued with the reputation of the school or the Boy Scouts.

There is no indication in section 340.1(b)(2)'s legislative history, or anywhere in the case law, that the Legislature intended section 340.1(b)(2) to apply to situations where the perpetrator's exposure to the victim did *not* arise out of the perpetrator's relationship with the third-party defendant.

Robson's arguments to the contrary are unpersuasive.

First, Robson argues that section 340.1(b)(2) does not explicitly state that the perpetrator's access to the plaintiff must arise out of the perpetrator's relationship with the third-party defendant. (AOB 61.) But the Supreme Court has already recognized that section 340.1(b)(2) includes implicit limitations, derived from "[t]he statute's enumeration of the necessary relationship between the nonperpetrator defendant and the perpetrator . . . ." (*Doe v. City of Los Angeles, supra*, 42 Cal.4th at p. 544.) *Doe* focused on section 340.1(b)(2)'s implicit control requirement, not whether access to the victim must arise out of the perpetrator's relationship with the third-party defendant. But both requirements share the same rationale: *Aaronoff* derived both from 340.1(b)(2)'s restriction to certain relationships.

(136 Cal.App.4th at p. 921.) Robson has not identified a single authority disagreeing with *Aaronoff*'s reading of the statute.

Second, Robson argues that section 340.1(b)(2) should be "'construed broadly'" to effectuate the Legislature's intent of expanding the statute of limitations for childhood molestation claims. (AOB 61.) But as already discussed (pp. 48-49, *ante*), a rule of liberal construction does not dictate adopting every argument a plaintiff makes for expanding section 340.1(b)(2). As the Supreme Court has explained, "the legislative expansion of the limitations period has been measured and deliberate," striking a balance between permitting plaintiffs to pursue claims and "the equally strong policy in favor of affording repose—a policy also considered by the Legislature." (*Quarry, supra*, 53 Cal.4th at pp. 988-990.) It is not the judiciary's job to upset that balance by "'read[ing] into the statute that which the Legislature has excluded . . . .'" (*Id.* at p. 988.)

Finally, Robson's attempts to limit *Aaronoff* to its facts (i.e., parental abuse) are unpersuasive. (AOB 61-62.) The Supreme Court has already recognized that *Aaronoff* is more than just a case about parental abuse, by approving *Aaronoff*'s conclusion that section 340.1(b)(2) requires control over the perpetrator. (*Doe v. City of Los Angeles, supra*, 42 Cal.4th at pp. 543-544.) *Aaronoff*'s conclusion that section 340.1(b)(2) also requires the abuse to have arisen out of the employment relationship follows

the same reasoning already endorsed by the Supreme Court in *Doe* and is equally valid.

Moreover, *Aaronoff* expressly contemplated other circumstances in which section 340.1(b)(2) would not apply, making clear that its reasoning is not limited to parent-child relationships. "For example," *Aaronoff* explains, "the employer of an office worker would neither have the ability nor responsibility to 'take reasonable steps, and to implement reasonable safeguards,' to prevent the office worker from assaulting his or her own child, even if the employer had knowledge of prior assaults." (*Aaronoff*, *supra*, 136 Cal.App.4th at p. 922.)

B. Jackson's Access To Robson Did Not Arise Out Of The Corporations' Relationship With Jackson.

Aaronoff's conclusion that section 340.1(b)(2) is limited to plaintiffs exposed to the perpetrator as an inherent part of the relationship between the perpetrator and third-party defendant is dispositive here. In no possible sense did Jackson's access to Robson "arise out of" Jackson's relationship with the Corporations. (*Aaronoff, supra*, 136 Cal.App.4th at p. 921.)

It is undisputed that the Corporations had nothing to do with how Jackson and Robson first met. Robson met Jackson after Robson's mother entered Robson in a dance contest (not sponsored by the Corporations), and the prize was to attend a

meet-and-greet with Jackson during his *Bad* concert tour (with which the Corporations had no involvement). (1 AA 528; see also 1 AA 141, 143, 238-239.) Robson danced on stage with Robson the next night. On the third night, Robson and his mother brought a thank-you note to Jackson's hotel, where Jackson invited them to his suite. (1 AA 243.) There is no evidence that the Corporations were involved in these meetings. MJJ Ventures did not even exist yet. (1 AA 516.)

Robson's next encounter with Jackson took place over two years later, in January 1990, when the Robsons were in Southern California with Robson's talent school. (1 AA 246-247, 529.) Robson's mother initiated this contact. After making several attempts to obtain contact information for Jackson, she finally got through to Jackson's personal assistant, Staikos. (1 AA 247-248, 530, 3 AA 3341-3343.) Mrs. Robson did not contact Staikos because of her connection to MJJ Productions. Mrs. Robson was trying to reach *Jackson*. (1 AA 247, 530 ¶34.) Through Staikos, Jackson invited the Robson family to meet with him at Record One. (1 AA 249, 530.) At the studio, the family showed Jackson videos and photographs of Robson performing. (1 AA 251, 530.) Jackson (not the Corporations) then invited the family to the Ranch for the weekend, and Robson claims that Jackson started molesting him during that trip. (1 AA 251, 530-531, 3 AA 3158-3159.)

It is undisputed that Robson and his family forged a friendship with Jackson during their trip to the Ranch in January 1990. (1 AA 533, 549-551.) After the Robson family returned to Australia, Jackson kept in touch with them, talking to both Robson and his mother on a regular basis. (1 AA 549-551, 3 AA 3354-3357.) This friendship led Robson and his mother to return to the United States two more times—first for a photo shoot paid for by L.A. Gear (not the Corporations) in May 1990, and next to meet with a choreographer who worked with Jackson in February 1991. (1 AA 258-261, 272-273, 531.) There is no evidence that these trips had anything to do with the Corporations. To the contrary, Robson has acknowledged that *Jackson* initiated them. (E.g., 1 AA 531 ["Undisputed" that Robson and his mother "returned to the United States to participate in a photo shoot with Michael Jackson *for L.A. Gear*" and "travelled to the United States *to visit Michael*" in February 1991, italics added], 551 [Robson: "*Jackson* arranged for Plaintiff to travel to the United States" for the L.A. Gear photo shoot, italics added].)

It is undisputed that Robson moved to California with his mother and sister in September of 1991, more than a year and a half after the abuse allegedly began. *Robson's mother asked Jackson* to sponsor them for immigration purposes. (1 AA 276, 288-289, 296-297 531, 533.) According to Robson's mother,

Jackson "instructed his office to do whatever was needed." (1 AA 288.) The Corporations then petitioned for visas for Robson, his mother, and his sister and agreed to sponsor them. (1 AA 553; 4 AA 3723-3725.) A letter cited by Robson indicated that MJJ Productions first employed Robson in November 1991 (4 AA 3729) and Robson contends he entered into a "talent agreement" with MJJ Ventures in April 1992 (4 AA 3730-3732).

These undisputed facts are analogous to *Aaronoff*'s facts in at least two respects. First, just as in *Aaronoff*, Robson's relationship with Jackson predates any relationship between Robson and the Corporations. (See 136 Cal.App.4th at pp. 916-917 [*Aaronoff* plaintiff alleged that her father abused her beginning when she was four years old, that she worked at her parents' car dealerships from the age of eight, and that abuse occurred at the dealerships after she turned ten].) Robson and his mother met Jackson in Australia in a context having nothing to do with the Corporations. (1 AA 516, 528-529.) And when Robson and his family came to the United States for the first time a few years later, their "connection" to MJJ Productions was one phone call Robson's mother made to Staikos to set up the meeting with Jackson at Record One. (1 AA 529-531, 549-550.) Robson's mother did not call Staikos because of Jackson's relationship with the Corporations (as, say, a mother might reach out to a Church and ask for her son to meet with a priest because of the priest's

relationship with the Church); she called Staikos because she wanted to meet Jackson, and someone had given her Staikos's number. (3 AA 3341-3343.)

Second, just as in *Aaronoff*, Robson alleges that Jackson began abusing him long before Robson was employed by either of the Corporations. Robson alleges the abuse began in January 1990 (3 AA 3158-3159), more than a year before MJJ Ventures even existed (1 AA 516), and nearly two years before Robson was employed by either of the Corporations (4 AA 3729-3732). In *Aaronoff*'s words, the fact that a significant portion "of the time period in which the alleged abuse occurred had passed before plaintiff began working for the defendants indicates the alleged abuse was unrelated to the work relationship." (*Aaronoff, supra*, 136 Cal.App.4th at p. 923.)

In short, Robson was not "exposed to [Jackson] as an inherent part of the environment created by the relationship between [Jackson] and the [Corporations]" and the alleged abuse "did not arise out of the employment relationship," as required for section 340.1(b)(2). (See *Aaronoff, supra*, 136 Cal.App.4th at pp. 921, 923.) The facts here are nothing like cases where a child enrolls in a school or church youth group and, *as a result of that affiliation*, is exposed to an abusive teacher or priest. No reasonable factfinder could conclude that Robson's mother allowed Robson to be around Jackson *because she trusted the*

Corporations and, by extension, the authority and reputation associated with the Corporations. This is particularly true in light of her testimony that it was *Jackson* whom she inherently trusted (1 AA 256, 258-259, 264, 271, 534), and that she knew little about the Corporations other than the fact that they were *Jackson's companies* (1 AA 292-293, 295, 535).

The evidence overwhelmingly compels a conclusion that Jackson's access to Robson, and Robson's exposure to Jackson, flowed from Jackson personally, from his personal fame. Accordingly, this is not the type of third-party defendant claim that is encompassed by section 340.1(b)(2). (*Aaronoff, supra*, 136 Cal.App.4th at p. 921.)

CONCLUSION

Robson cannot use section 340.1(b)(2) to convert his time-barred action against Jackson's Estate into a timely action against Jackson's wholly-owned, self-controlled corporate entities. Jackson controlled the Corporations' conduct, not the other way around. Robson's attempt to shoehorn his action into section 340.1(b)(2)'s narrow exception to the statute of limitations is contrary to its plain language and was properly rejected by the trial court.

The judgment should be affirmed.

Dated: April 3, 2019

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Respondents' Brief contains 1**3,861 words**, not including the tables of contents and authorities, the caption page, signature blocks, this Certification page, or the following attachment.

Date: April 3, 2019

s/ Jonathan P. Steinsapir

Jonathan P. Steinsapir

ATTACHMENT

(Cal. Rules of Court, rule 8.204(d))

Code of Civil Procedure section 340.1, subdivisions (a) and (b)

(a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or 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, whichever period expires later, for any of the following actions:

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

(2) An 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.

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

(b)(1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.

(2) This subdivision does not apply if the person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and 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. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

PROOF OF SERVICE

State Of California, County Of Los Angeles

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 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On **April 3, 2019**, I served the foregoing document described as: **Respondents' Brief** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

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Executed on **April 3, 2019**, at Los Angeles, California.

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

s/ Rebecca E. Nieto
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