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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

WADE ROBSON, an individual,

Plaintiff

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

Defendants.

Case No. BC 508502
[Related to Case No. BP117321 and Case No. BC545264]

Assigned to the Hon. Mark A. Young

NOTICE OF RULING GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Date: April 20, 2021
Time: 8:30 a.m.

Action Filed: May 10, 2013
Trial Date: N/A

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Monday, April 26, 2021, Defendants' motion for summary judgment or, in the alternative, summary adjudication came on for regular hearing before the Hon. Mark A. Young in Department M of the Los Angeles Superior Court. Jonathan Steinsapir and Katherine T. Kleindienst, of Kinsella Weitzman Iser Kump LLP, appeared for Defendants MJJ Productions, Inc., and MJJ Ventures, Inc. Vince W. Finaldi and Alex Cunny, of Manly, Stewart & Finaldi, appeared for Plaintiff Wade Robson. Prior to the hearing, the Court circulated a tentative ruling, attached hereto as **Exhibit A**. After hearing argument from counsel, the Court adopted its tentative ruling as its final ruling, and therefore granted the motion for summary judgment in favor of Defendants and against Plaintiff. The Court then instructed Defendants' counsel to provide this notice along with a proposed judgment in favor of Defendants.

DATED: April 26, 2021

Respectfully Submitted:

KINSELLA WEITZMAN ISER KUMP LLP

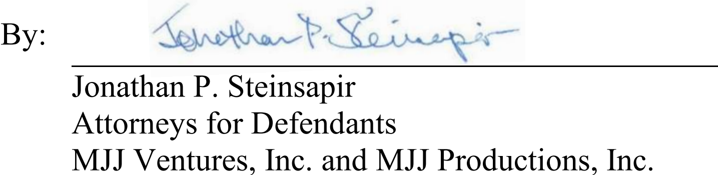
By: 

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EXHIBIT A

CASE NAME: **WADE ROBSON v. DOE 1 ET AL**
CASE NO.: **BC508502**
MOTION: Motion for Summary Judgment, or in the Alternative, Summary Adjudication
HEARING DATE: **04/20/2021**

Basis for Motion

Defendants seek summary judgment, or in the alternative, summary adjudication as follows:

1. All causes of action fail as a matter of law, because there is no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that Defendants' allegedly tortious acts or omissions were "a legal cause of the [alleged] childhood sexual assault," Code Civ. Proc. §§ 340.1(a)(2) & 340.1(a)(3), in order for the causes of action to come within the scope of subdivisions (a)(2) and (a)(3) of Code of Civil Procedure section 340.1 (and the causes of action are therefore untimely); and/or as required by the elements of the substantive causes of action themselves (all of which require legal causation, i.e., proximate causation).

2. The Second through Fifth Causes of Action, all of which are based in negligence, fail as a matter of law because there is no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that Defendants had duties of care towards Plaintiff as alleged in the Complaint.

3. The Second Cause of Action for "Negligence" in the Complaint based on the negligence per se doctrine fails as a matter of law, because there is no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that any of the pertinent employees of Defendants were mandated reporters under the Child Abuse and Neglect Reporting Act (CANRA), Penal Code §§ 11166 et seq. in effect at the time. Also, the negligence per se doctrine does not create a duty of care in any event; it only sets the standard of care when duty has first been established independently. There is no duty of care here.

4. The Third and Fourth Causes of Action for "Negligent Retention/Hiring" and "Negligent Supervision" in the Complaint fail as a matter of law, because there is no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that Defendants had the duty or ability to decline to hire Michael Jackson in the first place, to fire him or to supervise him. There is also no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that the alleged tortious conduct by Jackson against Plaintiff arose out of or was generated by the employment relationship between Jackson and the Defendants.

5. The Fifth Cause of Action for "Negligent Failure to Train, Warn, or Educate" fails as a matter of law, because there is no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that Defendants had a duty to train, warn or educate Plaintiff, his parents, the authorities, Defendants' employees, or anyone else about the dangers of sexual abuse generally or about the alleged dangers of Michael Jackson specifically.

6. The First Cause of Action for Intentional Infliction of Emotional Distress ("IIED") fails as a matter of law, because there is no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that Defendants themselves (as opposed to, allegedly, Michael Jackson personally) engaged in extreme and outrageous conduct. Also, this cause of action fails because, as alleged by Plaintiff, it is a claim for "direct perpetrator liability" and is therefore not cognizable under Code of Civil Procedure section 340.1 (and is therefore untimely). There is no triable issue as to any material fact showing otherwise.

7. The Sixth Cause of Action for Breach of Fiduciary Duty fails as a matter of law, because there is no triable issue as to any material fact sufficient to permit a rational trier of fact to conclude that Defendants were in a fiduciary relationship with Plaintiff and/or that fiduciary duties were breached.

In addition, and in the alternative, Defendants move for judgment on the pleadings as to each cause of action because they contend that the operative Complaint does not, and cannot, allege facts sufficient to constitute valid and timely causes of action for each cause of action.

LEGAL STANDARD

The purpose of a motion for summary judgment or summary adjudication "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (Aguilar v. Atl. Richfield Co. (2001) 25 Cal. 4th 826, 843.) "Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Adler v. Manor Healthcare Corp. (1992) 7 Cal.App.4th 1110, 1119.)

"The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denial of the motion." (Code Civ. Proc., § 437c(b)(1); see also Cal. Rules of Court, rule 3.1350(c)(2) & (d).)

"The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. *Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.*" (Code Civ. Proc., § 437b(b)(3) (emphasis added).)

"On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (Scalf v. D. B. Log

Homes, Inc. (2005) 128 Cal.App.4th 1510, 1519.) The moving party is entitled to summary judgment if they can show that there is no triable issue of material fact or if they have a complete defense thereto. (Aguilar v. Atlantic Richfiend Co. (2001) 25 Cal.4th 826, 843.)

In analyzing motions for summary judgment, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue." (Hinesley v. Oakshade Town Center (2005) 135 Cal.App.4th 289, 294.) Pursuant to Code of Civil Procedure section 437c(p)(2):

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists *but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.*

When deciding whether to grant summary judgment, the Court must consider all of the evidence set forth in the papers, except evidence to which the Court has sustained an objection, as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment. (Avivi, 159 Cal. App. 4th at 467.)

"A moving defendant now has two means by which to shift the burden of proof under subdivision (o)(2) of section 437c to the plaintiff to produce evidence creating a triable issue of fact. The defendant may rely upon factually insufficient discovery responses by the plaintiff to show that the plaintiff cannot establish an essential element of the cause of action sued upon…. Alternatively, the defendant may utilize the tried and true technique of negating ('disproving') an essential element of the plaintiff's cause of action." (Brantley v. Pisaro (1996) 42 Cal.App.4th 1591, 1598. See also Code Civ. Proc., § 437c(p)(2).) A moving defendant must show that plaintiff cannot reasonably obtain evidence to prove a cause of action, which is more than simply arguing that there is an absence of evidence. (Gaggero v. Yura (2003) 108 Cal.App.4th 884, 891.) A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c(f)(1).)

EVIDENTIARY OBJECTIONS[1]

Plaintiff submits 24 objections to the evidence offered in support for the Motion for Summary Judgment.

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[1] The Court notes that Plaintiff included full deposition transcripts. California Rules of Court, Rule 3.1116(b) provides, "Other than the title page, the exhibit must contain ***only the relevant pages of the transcript***. The original page number of any deposition page must be clearly visible." (CRC Rule 3.1116(b).) Plaintiff does not cite entire depositions. Plaintiff should have only included the portions that were cited in the opposition, and should have highlighted the relevant portions in "a manner that calls attention to the testimony."

Plaintiff submits objections to the declaration of John Branca, (1-15) the testimony of Jolie Levine (16-19) and Gayle Goforth (20), and certain exhibits (21-24)

Declaration of John Branca
Objection no. 1 – sustained
Objection no. 2 – overruled
Objection no. 3 – sustained in part "after he spoke to Paul McCarthy about the subject."
Objection no. 4 – sustained
Objection no. 5 – sustained
Objection no. 6 – overruled.
Objection no. 7 – overruled.
Objection no. 8 – overruled.
Objection no. 9 – overruled.
Objection no. 10 – overruled.
Objection no. 11 – overruled.
Objection no. 12 – overruled.
Objection no. 13 – overruled.
Objection no. 14 – overruled.
Objection no. 15 – overruled.

Deposition testimony of Jolie Levine
Objection no. 16 – overruled.
Objection no. 17 – overruled
Objection no. 18 – overruled
Objection no. 19 – overruled.

Deposition testimony of Gayle Goforth
Objection no. 20 – overruled.

Objections to exhibits
Objection no. 21 – overruled (Defs.' Exhibit 18.)
Objection no. 22 – overruled (Defs.' Exhibit 19.)
Objection no. 23 – overruled (Defs.' Exhibit 21.)
Objection no. 24 – sustained (Defs.' Exhibit 22.)

Defendants submits 14 objections to the evidence offered in opposition to the Motion for Summary Judgment.
Declaration of Alex Cunny
Objection no. 1 – sustained. (Pl.'s Exhibit 22)
Objection no. 2 – sustained. (Pl.'s Exhibit 23)
Objection no. 3 – sustained. (Pl.'s Exhibit 24)
Objection no. 4 – sustained. (Pl.'s Exhibit 25)
Objection no. 5 – sustained. (Pl.'s Exhibit 26)
Objection no. 6 – sustained. (Pl.'s Exhibit 31)
Objection no. 7 – sustained. (Pl.'s Exhibit 32)
Objection no. 8 – sustained. (Pl.'s Exhibit 38.)

Objection no. 9 – sustained. (Pl.'s Exhibit 39.)
Objection no. 10 – sustained. (Pl.'s Exhibit 40.)
Objection no. 11 – sustained. (Pl.'s Exhibit 41.)
Objection no. 12 – sustained. (Pl.'s Exhibit 42.)
Objection no. 13 – sustained. (Pl.'s Exhibit 44.)
Objection no. 14 – sustained. (Pl.'s Exhibit 45.)

REQUEST FOR JUDICIAL NOTICE

Plaintiff requests judicial notice of Exhibits 35, 36, 41, 44, 48, and 50.

The Court takes judicial notice of Exhibit 35. The Court takes judicial notice that Exhibit 36 exists but does not take judicial notice of hearsay statements contained therein. The Court takes judicial notice of Exhibits 48 and 50 as court records but does not take judicial notice of hearsay statements contained with the Court's rulings. The Court denies the request for judicial notice as to Exhibits 41 and 44 since the Court sustained evidentiary objections to these documents.

ANALYSIS

Second, third, fourth, and fifth causes of action - Negligence claims

Plaintiff Wade Robson alleges four distinct negligence causes of action, including (1) the second cause of action for negligence, (2) the third cause of action for negligent supervision, (3) the fourth cause of action for negligent retention/hiring, and (4) the fifth cause of action for negligent failure to warn. The elements of negligence are (1) the existence of a legal duty of care, (2) breach of that duty, and (3) proximate cause resulting (4) in an injury. (McIntyre v. Colonies-Pacific, LLC (2014) 228 Cal.App.4th 664, 671.)

Defendants argue that they are entitled to summary judgment because Plaintiff cannot prove proximate cause. Defendants further argue that under section 340.1, "legal cause" is required, which cannot be proven in this case. "In an action for recovery of damages suffered as a result of childhood sexual assault . . . for any of the following actions: . . . (2) An action for liability against any person or entity who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff. [or] (3) An action for liability against any person or entity if an intentional act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff." (Code Civ. Proc., § 340.1(a)(2), (3).) "Proximate cause is legal cause, as distinguished from the layman's notion of actual cause, and is always, in the first instance, a question of law." (Tate v. Canonica (1960) 180 Cal.App.2d 898, 901.) However, "It becomes a question of fact when conflicting inferences or conclusions can be drawn from the evidence within the area of proximate cause as legally defined." (Ibid.)

In opposition, Robson argues that Defendants attempt to provide a "cart before the horse" analysis with respect to "legal cause." The Court agrees that it does not need to address the issue of legal cause unless the Court finds that there is a duty owed by the Corporations to Robson. Therefore, the Court first addresses Defendants' duty arguments.

Defendants argue that they are entitled to summary judgment, or in the alternative, summary adjudication, on the negligence causes of action because Defendants did not owe Robson a legal duty. Defendants contend that there was no special relationship that would give rise to a legal duty for the Corporations to protect Robson from the alleged molestation, and as such, Defendants cannot be held liable for mere nonfeasance. In response, Robson argues that Civil Code section 1714 and the special relationship doctrine created a duty in this case. Robson argues that Defendants had an affirmative duty to protect him as a child from foreseeable sexual abuse from Jackson because of this special relationship. Robson's basis for the special relationship is that Defendants' hired Robson.

Duty is a question of law for the court. (Conti v. Watchtower Bible & Tract Society of New York, Inc. (2015) 235 Cal.App.4th 1214, 1226.) "'[A]s a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct.'" (Id. at 1226 [quoting Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1129].) The "special relationship" doctrine is an exception to this general rule. (Regents of University of California v. Superior Court (2018) 4 Cal.5th 607, 627 [Citations omitted.].) "Special relationships also have defined boundaries. They create a duty of care owed to a limited community[.]" (Id. at 621.) For example, a duty arising out of a "special relationship" in the context of a university is limited and "extends to activities that are tied to the school's curriculum but not to student behavior over which the university has no significant degree of control." (Regents of University of California v. Superior Court (2018) 4 Cal.5th 607, 627.) "A basic requisite of a duty based on a special relationship is the defendant's ability to control the other person's conduct. [Citation.].'" K.G. v. S.B. (2020) 46 Cal.App.5th 625, 631 [quoting Smith v. Freund (2011) 192 Cal.App.4th 466, 473].) "The absence of an ability to control is fatal to a claim of legal responsibility." (Todd v. Dow (1993) 19 Cal. App. 4th 253, 259.)

Defendants argue that there are no facts, or even disputed facts, that give rise to a special relationship between Robson and the Defendants. Defendants contend that the undisputed evidence demonstrates that the Corporations had no ability to control the behavior of Michael Jackson, and as a result, there is no special relationship. Defendant MJJ Productions was incorporated in California in 1979 as "Michael Jackson Productions, Inc." and its name was changed to "MJJ Productions, Inc." in 1982. (UF 6 [Branca Decl. ¶¶ 9-10, Exs. 1-4].) Jackson was MJJ Productions' sole shareholder at all times until his death. (UF 7 [Branca Decl. ¶ 10; Ex. 21 ¶ 8].) MJJ Ventures was incorporated in 1991. (UF 8 [Branca Decl. ¶ 16; Exs. 6-9].) Jackson was also MJJ Ventures' sole shareholder at all times until his death. (UF 9 [Branca Decl. ¶ 3; Ex. 22 ¶ 8].) Defendants argue and present undisputed evidence that during all times relevant to this case until June 1, 1994, Jackson was the sole director of both Corporations. (UF 46, 51 [Branca Decl. ¶¶ 12, 16; Exs. 3, 9].) Defendants also present evidence that on June 1, 1994, as sole shareholder and director of both Corporations, Jackson increased the size of the Board of Directors of both Corporations from one director to four directors, with Jackson, John Branca, Marshall Gelfand (Jackson's business manager), and Sandy Gallin (Jackson's talent manager) as the four directors of both Corporations. (UF 47, 52 [Branca Decl. ¶¶ 12, 18; Exs. 5, 10].)

In opposition, Plaintiff argues that the evidence demonstrates that Defendants did have control over Jackson and chose to not exert it. (Citing PMF 1-19.) In support of this position, Plaintiff relies upon evidence submitted by Defendants' containing the governing language of MJJ Productions and MJJ Ventures, as well as the number of directors on the boards of each entity. (See PMFs 4 -10.). Plaintiffs argue that this shows that Defendants had the ability to

control Jackson and chose not to exert it. Plaintiff also argues that certain employees of Defendants' had the ability to control Jackson. Finally, Plaintiff contends that Defendants had a duty to protect foreseeable victims of child sexual abuse such as himself.

In reply, Defendants argue that this evidence does not create a triable issue of material fact as to control. Defendants argue that under Corporations Code section 603(d) and Corporations Code section 303(a), Jackson had the power to remove members of the respective boards at will because he was the sole shareholder of the companies. Corporations Code section 303 provides, "Any or all of the directors may be removed without cause if the removal is approved by the outstanding shares . . .." (Corp. Code, § 303(a).). In support of this position that Jackson had complete control, Defendants point to Plaintiff's own evidence that on prior occasions Jackson had in fact overruled two employees. (See Cunny Decl., Ex. 7 74:22-75:17 (Vol. 3).)

The issue for the Court on summary judgment/adjudication is whether Defendants have shifted the burden, and if so, whether Plaintiffs have raised a disputed issue of material fact as to whether Defendants owed Plaintiff a legal duty. The issue of legal duty in this matter centers on whether there are disputed facts as to whether Jackson had complete legal authority over Defendants, or whether Defendants could control Jackson's business affairs or personal life. As set forth herein, the Court concludes that there are no disputed relevant facts as to this issue. A combination of the California Corporations Code, and the undisputed fact that Jackson was the sole director (until June 1994) and shareholder of the Corporations, leads the Court to conclude that Defendants had no actual ability to control Jackson. As the sole shareholder of both Defendants, Jackson had the sole authority to remove any and all of the board members without cause or notice, and reinstate himself as the sole board member. (Corp. Code §§ 303(a) and 603(a).) Thus, even when there were three additional board members appointed in 1994, they all served at the pleasure of Michael Jackson. Any attempts at discipline would be futile because Defendants had no legal ability to control Jackson. (Cf. Coit Drapery Cleaners Inc. v. Sequoia Ins. Co. (1993) 14 Cal.App.4th 1595, 1605 (in dicta, the court recognized the futility of a corporation attempting to discipline or supervise its majority shareholder who was also its president and chairman of the board.)

As to other employees exerting control over Jackson, Plaintiff's evidence in support of this contention does not support that position, or create a material issue of disputed fact as to control. For instance, in PMF 15, Plaintiff states that "Defendants' employees were required to follow Staikos' [a employee of Defendants] instructions, even if Jackson himself gave different orders. Staikos' orders controlled" and relies upon the testimony of Charli Michaels to support this position. Michaels' testimony, however, does not support the broad and powerful proposition offered in PMF 15. Michaels was referring to Staikos' instructions not to deliver items into Jackson's bedroom, but to leave them in the kitchen, even if Jackson asked otherwise. (See Cunny Decl., Ex. 3 163:24-164:10 (Vol. 2).) Moreover, Defendants' objection that the answer misstated the witness' testimony was preserved at the deposition and is well taken. (Id., Ex. 3 164: 11-12.) As such, Michaels' testimony does not support the contention that Defendants' employees could control Jackson's personal or professional life other than the placement of packages arriving at the residence. Moreover, while Ms. Staikos or Mr. Bray had the authority to hire and fire employees of the Defendants, there is no evidence that they held power over Jackson or his personal actions.

The lack of control is further illustrated by the location where the abuse is alleged to have occurred – Neverland Valley Ranch and a condominium nicknamed "The Hideout," which were owned solely by Jackson and not by the corporate Defendants. (See FAC ¶¶ 22 and 25; UMF 10.) Defendants submit evidence that they had no authority to govern Jackson's ingress and egress from these locations, control who visited him at these locations, or govern procedures regarding visitors to these locations. (UMF 12; Branca Decl., ¶ 24.) While Plaintiff disputes this fact, Plaintiff does not submit any evidence in support of that position, other than Defendants' corporate structure and board of directors, which is irrelevant to this issue. (Plaintiff's Resp. to UMF 12; PMF 4-10.) Plaintiff does not submit any evidence that Defendants could control Jackson's behavior at these two locations.

Since Plaintiff cannot create a material issue of disputed fact as to the existence of a special relationship between Defendants and Plaintiff, Plaintiff would be required to show misfeasance on the part of Defendants. In his opposition, Plaintiff conflates misfeasance and nonfeasance. As stated, liability or duty "may not be premised on a defendant's nonfeasance if the defendant did not create the peril." (Todd, 19 Cal. App. 4th at 260.) Plaintiff's reliance on Lugtu v. Cal. Highway Patrol, (2001) 26 Cal. 4th 703 is misplaced since that matter involved misfeasance, or the creation of the peril, specifically, the officer's directing of the driver to stop in a center median of the freeway where they were later struck by a truck. (Id. at 716-17.) The facts submitted by Plaintiff do not support the conclusion that Defendants created the peril (i.e. Jackson), but at most, after Plaintiff and Jackson had connected (UF 14-17 and 19-21), and after Plaintiff was first molested by Jackson (UF 22-23), Defendants provided transportation, security and similar services. (PMF 25-28 and 51-56.)

There is no evidence supporting Plaintiff's contention that Defendants exercised control over Jackson. The evidence further demonstrates that Defendants had no legal ability to control Jackson, because Jackson had complete and total ownership of the corporate defendants. Without control, there is no special relationship or duty that exists between Defendants and Plaintiff. In addition, there is no evidence of misfeasance by Defendants. Thus, Plaintiff's negligence claims fail and Defendants are entitled to summary adjudication on the second through fifth causes of action.

First Cause of Action: Intentional Infliction of Emotional Distress

Defendants argue that they are entitled to summary adjudication on the first cause of action for intentional infliction of emotional distress ("IIED") because Plaintiff cannot demonstrate "extreme and outrageous conduct" by Defendants. In support of this position, Defendants point to paragraphs 88 and 89 in the fourth amended complaint and argue that there is nothing outrageous about a sole shareholder, in this case Jackson, holding a position of authority that permits that person to conduct his own business affairs. Defendants also point to evidence that contradicts Plaintiff's allegations in paragraph 88. Defendants argue that they did not put Jackson in positions of authority and that the evidence shows that Jackson created and had ultimate control over the corporations as a result of being the sole shareholder. (UF 7, 9, 45, 49, 50, 54.) Defendants further argue that corporations are not "persons" under Code of Civil Procedure section 340.1(a)(1) and cannot be held liable for intentional infliction of emotional distress under that code section, citing Boy Scouts of America National Foundation v. Superior Court (2012) 206 Cal.App.4th 428, 445. Defendants also contend that the evidence does not

show that Plaintiff was procured by the corporations. (UF 13-23.). Defendants also argue that they cannot be held vicariously liable for their employee's torts.

In opposition, Plaintiff argues that Defendants are liable because *they facilitated* the abuse and procured children for Jackson. (Opp. 19-20; PMF 24-32 and 39-82.) Plaintiff does not argue, or put forth evidence, in support of his complaint's allegations set forth in paragraphs 88-89 regarding Defendants placing Jackson in a position of authority or failing to supervise Jackson. Plaintiff also argues that an institution can be held liable, relying upon Hightower v. Roman Catholic Bishop of Sacramento (2006) 142 Cal.App.4th 759. In reply, Defendants argue that they cannot be held directly liable under Code of Civil Procedure section 340.1(a)(1) and that such claims fail as matter of law under Boy Scouts of America.

In Boy Scouts of America, the Court of Appeal in the context of the statute of limitations rejected liability for IIED for a corporation under section 340.1(a)(1). (Boy Scouts of America, 206 Cal.App.4th at 444-45.) The Court explained, "Even assuming that plaintiffs' action was brought against the Boy Scouts in the capacity of perpetrators (whether as aiders and abettors or as child procurers under Penal Code section 266j), the Boy Scouts remain, as alleged in the complaint, corporate entities to which subdivision (a)(1) of section 340.1 does not apply." (Id. at 445; see also Pen. Code, § 266j ["Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person, is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years, and by a fine not to exceed fifteen thousand dollars ($15,000)."]) The Court reasoned that 340.1(a)(1) did not apply to the Boy Scouts because the legislature omitted entities from that subdivision -- "[a] 'person' for purposes of subdivision (a)(1) may not be defined to include an entity defendant. [Such] interpretation is confirmed by the legislative history of section 340.1, subdivisions (a)(1)–(3) and (b)(1)." (Id. at 447.) While Plaintiff relies upon Hightower, 142 Cal.App.4th 759, that matter involved section 340.1's limitations period, and the delayed discovery rule and not the entity exclusion of section 340.1. Hightower, 142 Cal.App.4th at 768.

Since Plaintiff admits that he is attempting to hold Defendants directly liable under a theory of procurement, i.e. direct liability for sexual abuse, and since such claims are not available against entities, Defendants are entitled to summary adjudication on this claim.

Sixth Cause of Action: Breach of Fiduciary Duty

Defendants argue that they are entitled to summary adjudication on the sixth cause of action because there is no triable issue of material fact as to whether a fiduciary relationship between Plaintiff and Defendants existed or whether those fiduciary duties were breached.

"Whether a fiduciary duty exists is generally a question of law. [Citation.]" (Amtower v. Photon Dynamics, Inc. (2008) 158 Cal.App.4th 1582, 1599, 71 Cal.Rptr.3d 361.) A fiduciary relationship is created when a party either (1) knowingly undertakes to act on behalf and for the benefit of another, or (2) enters into a relationship which imposes that undertaking as a matter of law. (City of Hope Nat. Med. Ctr. v. Genentech, Inc., (2008) 43 Cal.4th 375, 386 (2008).) "In general, employment-type relationships are not fiduciary relationships. (Amid v. Hawthorne

Community Medical Group, Inc. (1989) 212 Cal.App.3d 1383, 1391.) In the absence of a fiduciary relationship, there can be no breach of fiduciary duty as a matter of law. (O'Byrne v. Santa Monica-UCLA Medical Center (2001) 94 Cal.App.4th 797, 811–812.)

Defendants argue that there is no evidence that Defendants either undertook an act or entered into a relationship that would impose such a duty. Defendants argue that the evidence demonstrates that there were two *potential* relationships that Plaintiff had with Defendants. Robson appeared in three music videos for Jackson, and Robson was part of a rap group that released an album on a label created by MJJ Ventures. (UF 60 – 61.) Defendants argue that this sort of relationship, performer – studio/record company are not fiduciary in nature citing Wolf v. Superior Court (2003) 107 Cal.App.4th 25. Defendants also argue that there is no evidence that Plaintiff was placed under the care and supervision of either corporation. Defendants contend that it is undisputed that the corporations were not child care businesses. (UF 63-64.).

In opposition, Plaintiff argues that as a minor employee, he entered into a confidential and trusting relationship with *Jackson*. Plaintiff also argues that Defendants had physical custody of Plaintiff through Jackson. Plaintiff contends Defendants were child care businesses. In reply, Defendants argue that there is no evidence that Plaintiff was in a confidential relationship with Defendants individually apart from Jackson. Defendants argue that the evidence shows that the relationship with Jackson arose independent of the corporations, and prior to Plaintiff's employment. (UF 13-23, 31, 33, 34.)

Once again, the issue for the Court is whether there are any disputed facts that could potentially give rise to the creation of a fiduciary duty. Here, there is no evidence that Plaintiff was in a trusting relationship with the individual corporate Defendants, even if there is evidence of such a relationship with Jackson. (See PMF 48-56 (concerning Jackson only).) Plaintiff further argues that Defendants and Jackson had physical custody of Plaintiff, who was a minor. Plaintiff, however, has not alleged any facts demonstrating that Defendants had a duty to control the conduct of Plaintiff as a parent would or that Defendants had physical custody of Plaintiff. (See Poncher v. Brackett (1966) 246 Cal.App.2d 769, 773–774 (raw allegations that parents stood in relation of *loco parentis* insufficient as a matter of law.) Since the undisputed evidence shows that Plaintiff did not enter into a relationship with Defendants that would impose a fiduciary duty, Defendants are entitled to summary adjudication on this cause of action.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On April 26, 2021, I served true copies of the following document(s) described as **NOTICE OF RULING GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

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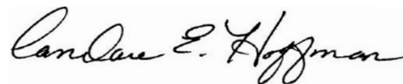
☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Kinsella Weitzman Iser Kump LLP's practice for collecting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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 26, 2021, at Los Angeles, California.



Candace Hoffman

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