
PARTIES/ATTORNEYS

Plaintiff	Teresa Acosta	Anne Andrews Sean Thomas Higgins Kimberly DeGonia Ryan McIntosh Andrews & Thornton
Defendant	Doe 1	Rick Richmond Andrew E. Calderón Tyler J. Franklin Larson LLP
Defendant	Doe 2	Kevin Monson

TENTATIVE RULING

For all the reasons discussed below, the demurrer is sustained. The court will allow plaintiff the opportunity to amend the complaint by April 21, 2025, to address the statute of limitations issues as to Doe 2. The court notes that no showing of corroborative fact as to the charging allegations against either defendant has been submitted, nor has plaintiff requested permission to substitute defendant's names for the Doe designations. Thus, any submissions naming the parties must be filed confidentially. The court further orders that anything filed confidentially be accompanied by redacted versions for placement in the public file.

Plaintiff Teresa Acosta alleges that when she was a minor, she and her mother were members of the congregation at Doe 1, a religious entity (Doe 1 or Church). She alleges her mother was manipulated into marrying Doe 2, who was a Deacon¹ of Doe 1, allegedly so he could gain greater access to abuse plaintiff.²

¹ Deacons are adult volunteers with significant respect and responsibility within the Church.

² Where the plaintiff is 40 years of age or older, the "defendant shall be named by "Doe" designation in any pleadings or papers filed in the action until there has been a showing of corroborative fact as to the charging allegations against that defendant." (Code Civ. Proc., § 340.1, subd. (e), (k).) The certificate of corroborative fact required to identify the defendant by name must include an attorney declaration setting forth "in clear and concise terms the nature and substance of one or more facts corroborative of one or more of the charging allegations against a defendant or defendants." (§ 340.1(l)(1).) "[A] fact is corroborative of an allegation if it confirms or supports the allegation." (*Ibid.*) "If the corroborative fact is evidenced by the statement of a witness or the contents of a document," the attorney must declare personal knowledge thereof and provide "the identity and location of the witness or document." (*Ibid.*) The court must keep all certificates of corroborative fact under seal and confidential from both the public and the parties. (§ 340.1(n).) Plaintiff has not offered a showing of corroborative fact as of yet.

Between 1976 and 1983, when she was between the ages of five and twelve years old, she was sexually abused by Doe 2 in his home office and prayer room. At age 5, she was forced to manually masturbate Doe 2 until ejaculation multiple times per week. Doe 2 also physically abused plaintiff, sometimes in front of other Church members. When there was no consequence to the physical abuse, Doe 2 escalated the sexual abuse and began to force plaintiff to perform oral sex on him at age 6 and when she was approximately seven years old, he began to penetrate her. These occurrences went on almost daily for five years. Plaintiff disclosed the abuse to her biological father in 1978, who immediately reported the details to the police department and to the Bishop of the Santa Maria Ward. The Church allowed Doe 2 to maintain his position of authority as Deacon. Plaintiff ultimately ran away from home at fourteen years of age.

On September 3, 2024, Plaintiff filed her complaint alleging the following: (1) negligence against all defendants; (2) negligent supervision of minor against all defendants; (3) sexual abuse of minor against all defendants; (4) intentional infliction of emotional distress against Doe 2; (5) negligent hiring, supervision, and retention of unfit employee against Doe 1; (6) sexual assault of a minor against Doe 2; and (7) sexual harassment against all defendants.

Doe 2 demurs based on the ground that the causes of action alleged against him fail to state sufficient facts because the statute of limitations has expired. Opposition and reply have been filed.

“Section 340.1 governs the period within which a plaintiff must bring a tort claim based upon childhood sexual abuse.” (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 952.) The Legislature has repeatedly amended section 340.1 to “expand the statute of limitations and decrease other barriers to victims seeking to bring their claims of abuse.” (*Id.*) Effective January 1, 2020, Assembly Bill 218 again extended the statute of limitations to permit an “action for recovery of damages suffered as a result of childhood sexual assault” to be brought by age 40 or within five years of when the plaintiff discovered (or reasonably should have discovered) the resulting psychological injury or illness. (§ 340.1, subds. (a), (c).) (*Doe v. Marysville Joint Unified School Dist.* (2023) 89 Cal.App.5th 910, 915.) It also revived all claims of childhood sexual abuse not previously litigated to finality for a 3-year period, providing the claim must be “commenced within three years of January 1, 2020.” (§ 340.1, former subd. (q).) That period expired on January 1, 2023.³

Doe 2 points out that plaintiff is over 40 years old (Complaint, ¶ 10) and that she failed to file this complaint before January 1, 2023. Consequently, he argues the

³ Currently, § 340.1 subd. (q) provides: “Notwithstanding any other law, a claim for damages based on conduct described in paragraphs (1) through (3), inclusive, of subdivision (a), in which the childhood sexual assault occurred on or before December 31, 2023, may only be commenced pursuant to the applicable statute of limitations set forth in existing law as it read on December 31, 2023.”

complaint was untimely. He acknowledges that the complaint alleges that “Prior to the December 31, 2022, filing deadline, PLAINTIFF and CHURCH entered into a tolling agreement [Tolling Agreement] that extended the time to file until September 4, 2024.” (Complaint, ¶ 18.) Doe 2 argues that the complaint fails to allege he was a party to the Tolling Agreement. Indeed, plaintiff’s complaint specifies that “CHURCH” refers to Doe 1. (Complaint, ¶ 1.) This is the entirety of the allegation regarding the Tolling Agreement in the complaint.

In opposition, plaintiff submits the Tolling Agreement as an attachment to the declaration of attorney Ryan McIntosh. This, of course, drew an objection from Doe 2 which must be sustained. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The Tolling Agreement is not judicially noticeable. Without review of the relevant provisions of the Tolling Agreement, plaintiff has no argument in response to the demurrer.

In reply, Doe 2 argues that leave to amend should not be granted because it is apparent from the Tolling Agreement that he has not signed it, and therefore plaintiff has demonstrated that no amendment to the complaint can ever bring Doe 2 within any extension of the statute of limitations based on the Tolling Agreement. In opposition, plaintiff conceded that Doe 2 did not sign the agreement, but points out that it was expressly between “DOE 1”, its affiliated entities, including, but not limited to Family Services, and any ecclesiastical officers [], and [plaintiff and other claimants] hereinafter collectively “PARTIES.” Plaintiff argues that Doe 1 had authority to bind Doe 2 since he is within the definition of an “ecclesiastical officer.” These legal points are not before the court for purposes of this demurrer. The court nevertheless notes that the liberal policy of amendment and is unable to find this complaint is incapable of amendment. (See *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103—ruling sustaining a general demurrer without leave to amend will only be upheld if the complaint alleges facts which do not entitle plaintiff to relief on any legal theory; *McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303–304—unless complaint shows on its face it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion.)

The demurrer is sustained. The court will allow plaintiff the opportunity to amend the complaint by April 21, 2025 to address the statute of limitations issues as to Doe 2. The court notes that no showing of corroborative fact as to the charging allegations against either defendant has been submitted, nor has plaintiff requested permission to substitute defendant’s names for the Doe designations. Thus, any submissions naming the parties must be filed confidentially. The court further orders that anything filed confidentially be accompanied by redacted versions for placement in the public file.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)