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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOHN ROE 58 et al., Plaintiffs and Appellants, v. DEFENDANT DOE 1 et al., Defendants and Respondents.	B215948 (Judicial Council Coordinated Proceedings No. JCCP 4297)

APPEAL from a judgment of the Superior Court for the County of Los Angeles. Emilie H. Elias, Judge. Affirmed.

Zalkin & Zimmer, Irwin M. Zalkin and Devin M. Storey; The Senators Law Firm and Joseph L. Dunn for Plaintiffs and Appellants.

Stokes Roberts & Wagner, Maria C. Roberts, Shirley A. Gauvin, Christina Yates; Hennigan, Bennett & Dorman and Lee W. Potts for Defendants and Respondents Doe 1, Doe 4 and Doe 5.

Akin Gump Strauss Hauer & Feld, John A. Karaczynski and Rex S. Heinke for Defendant and Respondent Doe 2.

Murchison & Cumming, Michael B. Lawler and Edmund G. Farrell III for Defendant and Respondent Doe 3.

Plaintiffs John Roe 58 and John Roe 61 appeal from the judgment of dismissal entered after the trial court sustained without leave to amend the demurrers of various Catholic Church entities to their first amended complaint. Because the statute of limitations on the plaintiffs' claims expired years before they sued, and because they did not sue in 2003 during the Legislature's one-year revival window for such claims, their claims again became time-barred and the trial court correctly sustained the demurrers on that ground.

INTRODUCTION

Code of Civil Procedure section 340.1 is an interpretive beast, a Frankenstein's monster of legislative parts stitched together over 16 years. And like Shelley's literary counterpart, this legislative monster is easily misunderstood, especially when it comes to the 2002 amendments that both lengthened the limitations period for certain childhood sex abuse claims against third parties and revived for one year all such claims that had been barred under the previous versions of the statute. Consistent with our earlier decisions, we hold once more that all such actions that were time barred before the 2002 amendments took effect were revived for the calendar year 2003 only, regardless of whether the plaintiffs had yet discovered the link between their abuse as children and their adult onset of psychological injuries. After a brief summary of the few relevant facts, we will dissect the statute's parts.

FACTS AND PROCEDURAL HISTORY

John Roe 58 and John Roe 61 alleged that they were sexually molested by Father Robert S. Koerner when they were children who attended a Roman Catholic Church at a parish in Calipatria.[1] John Roe 58 alleged that the molestations began in 1981, when he was 8 years old, and ended in 1983, when he was 10 years old. John Roe 61 alleged that the molestations began in 1968, when he was 8 years old, and ended in 1974, when he

[1] We will refer to John Roe 58 and John Roe 61 collectively as appellants.

was 14 years old. In April 2008, appellants sued several Catholic Church entities as Doe defendants, stating various causes of action based on allegations that even though the defendants knew Koerner had molested children who attended his church, they continued to keep Koerner in place as a parish priest.[2] John Roe 61 alleged that he repressed all memory of the sexual abuse until his memories began to return in December 2004. John Roe 58 alleged that various "psychological coping mechanisms" prevented him from ascertaining his damages or understanding that the abuse he suffered had been wrongful. Both alleged that they sued within three years of discovering that psychological injury occurring during adulthood was caused by the abuse.[3]

Under the statute of limitations then in effect, appellants' claims became time-barred when each turned 19. Based on their ages as alleged in the first amended complaint, John Roe 58 turned 19 sometime in 1992, and John Roe 61 turned 19 sometime in 1979. Respondents' demurrers were sustained without leave to amend because neither appellant sued during the calendar year 2003, during which their claims had been revived by the Legislature.

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[2] After withdrawing several causes of action, those that remained in the first amended complaint were: four based on various permutations of alleged negligence; fraud; intentional infliction of emotional distress; unfair competition under Business and Professions Code section 17200; premises liability; sexual battery; and procuring or making a child available to a molester. The complaint included a third plaintiff, John Roe 65, who is not a party to this appeal.

The complaint identified a San Diego-based diocese as Doe 1. Doe 2 is identified as the religious order that ordained Koerner. Doe 3 is identified as the religious order to which Koerner belonged. Doe 4 is identified as the Catholic parish in Calipatria. Doe 5 is identified as the Barstow parish where the alleged molester of John Roe 65 was assigned. We will refer to these parties collectively as respondents.

[3] As discussed in detail in section 1, the new limitations period for claims such as plaintiffs' is three years from the discovery that psychological injury occurring during adulthood was caused by sexual abuse that occurred during childhood.

DISCUSSION

1. *Relevant History of Code of Civil Procedure Section 340.1*[4]

Until 1986, all sexual molestation claims were governed by the one-year statute of limitations then applicable to most tort claims. (§ 340; see *DeRose v Carswell* (1987) 196 Cal.App.3d 1011, 1015, 1018 [suggesting delayed discovery may be available for repressed memory].) If the victim was a minor, however, that period was tolled by section 352 until the victim's 18th birthday, meaning the victim had one year after his or her 18th birthday to file suit. In 1986, the Legislature added section 340.1, which increased the limitations period to three years, but only for abuse of a child under age 14 by a household or family member. (*Hightower v. Roman Catholic Bishop of Sacramento* (2006) 142 Cal.App.4th 759 (*Hightower*).) Section 340.1 was amended in 1994 to extend the limitations period to the *later* of either age 26 or three years from the plaintiff's discovery that psychological injury occurring after adulthood had been caused by the actual sexual abuse. (Former § 340.1, subd. (a).) The 1994 amendment applied to only the perpetrator, meaning that claims against entities that employed or otherwise exercised control over the perpetrator were still subject to the one-year limitations period and tolling until 18 years old for victims who were minors when the abuse occurred. (*Hightower*, at p. 765.)

In 1998, the Legislature amended section 340.1 to include causes of action for sex abuse against nonabusers whose negligent or intentional acts were a "legal cause" of a child's sexual abuse. (§ 340.1, subd. (a)(2) & (3), added by Stats. 1998, ch. 1032, § 1.)[5]

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[4] All undesignated section references are to the Code of Civil Procedure.

[5] By "nonabuser," we refer generally to those persons or entities whose alleged liability is based on sex abuse committed by someone else. Using this definition, an employer of the actual child molester is a nonabuser. The present claims are against nonabuser Catholic Church entities.

Section 340.1, subdivision (a)(2) applied to actions against persons or entities who owed a duty of care to the plaintiff, where a wrongful or negligent act by that defendant was a legal cause of the childhood sexual abuse. Section 340.1, subdivision (a)(3)

While subdivision (a) of section 340.1 continued to state that the limitations period for actions based on childhood sexual abuse was the later of a plaintiff's 26th birthday or three years from the discovery that adult-onset psychological injury had been caused by the abuse, the newly-added subdivision (b) stated that no action against nonabusers could be commenced on or after the plaintiff's 26th birthday. (*Hightower, supra,* 142 Cal.App.4th at pp. 765-766.) Thus, some claims against nonabusers for sexual abuse were barred before the victim was even aware of his or her injuries once the victim turned 26.[6]

In 1999, the Legislature again amended section 340.1 to clarify that the 1998 amendment relating to the liability of nonabuser persons or entities applied only to actions begun on or after January 1, 1999, or, if filed before then, to actions still pending as of that date, "including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999." Cases that were final before that date

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applied to actions against such entities whose intentional act was a legal cause of the abuse.

[6] It is unclear whether the Legislature intended that the three years from discovery rule of subdivision (a) continued to apply under the subdivision (b) age 26 cap for subdivision (a)(2) and (3) cases against nonabusers. Subdivision (a) states that the limitations period for childhood sex abuse claims is the *later* of age 26 or three years from discovery, while subdivision (b) states that no actions against nonabusers can be brought after the plaintiff's 26th birthday. Does this mean that the three years from discovery rule has no application in that scenario, and the cut-off date is a plaintiff's 26th birthday regardless of when or whether discovery occurred? If so, then for clarity's sake, subdivision (b) could have said so expressly. If the Legislature intended that the three years from discovery rule would still apply to actions against nonabusers, how does it work? Is it the *earlier* of three years from discovery or a plaintiff's 26th birthday? If so, that would promote the policy of having victims who made discovery bring their claims sooner rather than later. And if it is not the earlier of three years from discovery or a plaintiff's 26th birthday, what could it be? It cannot be the later of those two time periods because of the age 26 cut-off date, leaving no way to reconcile the continued co-existence of the two alternate time periods.

It makes no difference to our analysis, however, and for purposes of our discussion, we will assume that actions against nonabusers, except for those described in subdivision (b)(2), must be filed no later than a plaintiff's 26th birthday. Legislative clarification of this point would, however, be helpful.

were not revived. (§ 340.1, subd. (u), added by Stats. 1999, ch. 120, § 1; *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 (*Shirk*).)[7]

In short, until January 1, 1999, child molestation victims had until they turned 19 to sue nonabuser persons or entities. As of that date, the limitations period for claims against nonabusers expired on a victim's 26th birthday.

The legislative amendment at issue here was passed in 2002 and took effect on January 1, 2003. It retained the limitations period for actions against childhood sex abuse *perpetrators* at the later of age 26 or three years from discovery of the causal link between adult-onset psychological injury and the molestation. The age 26 cap from the 1998 amendment was retained against nonabuser entities or persons (§ 340.1, subds. (a)(1)-(3), (b)(1)), with an exception carved out for one category of such defendants. "[I]f 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 . . . ," then the age 26 cut-off did not apply. (§ 340.1, subd. (b)(2).) In those cases, the statute of limitations therefore became three years from the date of discovery.[8]

The Legislature also amended section 340.1 to revive for calendar year 2003 all nonabuser claims that fell within the description of section 340.1, subdivision (b)(2) and would otherwise be barred because the limitations period had expired. That provision states: "Notwithstanding any other provision of law, any claim for damages [falling under subdivision (b)(2)] that would otherwise be barred as of January 1, 2003, solely because the applicable statute of limitations has or had expired, is revived, and, in that case, a cause of action may be commenced within one year of January 1, 2003. Nothing

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[7] Subdivision (u) was originally enacted as subdivision (s) of section 340.1.

[8] For ease of reference, when we refer to discovery or making discovery, we mean discovery that psychological harm occurring during adulthood was caused by an act of childhood molestation. (§ 340.1, subd. (a).)

in this subdivision shall be construed to alter the applicable statute of limitations period of an action that is not time barred as of January 1, 2003." (§ 340.1, subd. (c).)[9]

To sum up, effective 2003, section 340.1 established the limitations period for three groups of defendants in order of descending culpability: (1) for perpetrators, the *later* of the plaintiff's 26th birthday or three years from discovery (subd. (a)(1)); (2) for nonabusers who did not take reasonable steps to safeguard minors from a *known or suspected* molester, three years from discovery (subd. (b)(2)); and (3) for all other nonabusers whose negligent, wrongful, or intentional conduct was a legal cause of the childhood sexual abuse, no later than the plaintiff's 26th birthday (subds. (a)(2) & (3), (b)(1)).[10]

2. *The* Hightower *Decision*

In *Hightower*, *supra*, 142 Cal.App.4th 759, the plaintiff alleged he was molested in the early 1970s, meaning his claims against the perpetrator and any nonabusers became time-barred when he turned 19 in 1977. After making a defective attempt to sue nonabusers during the 2003 revival period, the plaintiff finally filed a complaint in April 2004. The plaintiff alleged he did not discover the cause of his psychological injuries until 2003, claiming his action was timely under the expanded limitations period approved by the Legislature in 2002. This court rejected that contention because the Legislature's one-year revival window for *any* subdivision (b)(2) claims that had already lapsed "drew a clear distinction between claims that were time-barred and those that were not. Hightower's interpretation would obliterate that distinction by allowing his time-

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9 We will hereafter refer to the various subdivisions of section 340.1 by subdivision only, without reference to section 340.1 itself. In other words, when we refer to "subdivision (b)(2)," we mean subdivision (b)(2) of section 340.1.

10 Subdivisions (a)(2), (a)(3), and (b)(2) all concern nonabusers whose liability rests on either negligent or intentional conduct. Subdivision (b)(2) defines a species of negligent nonabusers that would otherwise fall within subdivision (a)(2). For ease of reference, we will sometimes describe subdivision (a)(2) defendants as negligent nonabusers and subdivision (a)(3) defendants as intentional nonabusers. (See fn. 5, *ante.*)

barred claim to take advantage of the new limitations period," essentially sidestepping the one-year revival period. (*Id.* at pp. 767-768.) Therefore, we held, for subdivision (b)(2) nonabuser claims like Hightower's that were barred by the pre-2003 statute of limitations, the only available opportunity to sue was during the one-year revival window of 2003.

Appellants contend we were wrong in *Hightower* because: (1) the plain language of the statute shows it was intended to allow claims like theirs; (2) the legislative history, combined with the Legislature's ever-broadening amendments to the limitations period, show that their claims were valid, especially when viewed in light of section 340.1's remedial nature; (3) the Legislature's 2002 reenactment of section 340.1, subdivision (u), which clarified the scope of the 1998 amendment that first allowed for actions against nonabuser entities up to a plaintiff's 26th birthday, shows that subdivision (b)(2) was designed to have retroactive effect; (4) under the common law equitable doctrine of delayed discovery, their causes of action did not accrue until 2003; and (5) the longer, three-years from discovery provision for claims against perpetrators is applicable under vicarious liability principles or because respondents were themselves perpetrators.[11]

3. Appellants' Claims Are Time-Barred

A. The Plain Language of Subdivisions (b)(2) and (c) Bars the Claims

Statutes are presumed to operate prospectively from the date they take effect unless (1) they contain express language of retroactivity, or (2) other sources provide a

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[11] Appellants' opening appellate brief also asked us to depart from our decision in *Doe v. Roman Catholic Bishop of San Diego* (2009) 178 Cal.App.4th 1382 [101 Cal.Rptr.3d 398], which reaffirmed our holding in *Hightower*. Soon after that brief was filed, the California Supreme Court granted review in that matter. (*Doe*, review granted Feb. 3, 2010, S178478.) It joins two earlier sister court decisions that reached opposite conclusions on this issue. Those decisions, also pending before our Supreme Court, are: *Quarry v. Doe I* (2009) 170 Cal.App.4th 1574 [89 Cal.Rptr.3d 640], review granted June 10, 2009, S171382, and *K.J. v. Roman Catholic Bishop of Stockton* (2009) 172 Cal.App.4th 1388 [92 Cal.Rptr.3d 673], review granted June 24, 2009, S173042.

clear and unavoidable implication that the Legislature intended a statute to apply retroactively. (§ 3; *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467; *People ex rel. City of Bellflower v. Bellflower County Water Dist.* (1966) 247 Cal.App.2d 344, 350.) This rule applies to new or amended statutes of limitation. (*Andonagui v. The May Dept. Stores Co.* (2005) 128 Cal.App.4th 435, 441.) If the new limitations period is not expressly made retroactive, it does not revive actions that are already time-barred. (*Ibid.*) Subdivision (b)(2), which enlarged the limitations period for a limited class of nonabusers, does not mention retroactivity and therefore by itself does not make the newly enlarged limitations period retroactive. (*Gallo v. Superior Court* (1988) 200 Cal.App.3d 1375, 1379.)

Instead, subdivision (b)(2) is made retroactive by subdivision (c). As noted, subdivision (c) revives for the calendar year 2003 any subdivision (b)(2) claims "that would otherwise be barred as of January 1, 2003." As appellants point out, when the Legislature amended section 340.1 with revival provisions in subdivisions (r) and (u), it referred to claims that were barred by the law in effect "prior to" the effective date of those amendments. Because subdivision (c) does not use this language, and instead refers to claims that would otherwise be barred as of January 1, 2003, appellants contend the Legislature "intended subdivision (c) to apply to claims that were barred by the law existing on January 1, 2003, i.e., to those claims by individuals who discovered the cause of their injuries more than three years prior to the effective date of the [2002] amendment." Those who had not yet made discovery were free to sue under the newly extended limitations period even if they had turned 26 years earlier, they contend.

We disagree. Instead, the plain language of the statute, along with decisions interpreting a nearly identical provision, compels a different result. We begin with section 340.9, a virtually identical statute passed in 2000 that took effect on January 1, 2001, in order to revive claims by property owners against their insurance companies arising from the 1994 Northridge Earthquake. It provides: "(a) Notwithstanding any other provision of law or contract, any insurance claim for damages arising out of the Northridge earthquake of 1994 which is barred as of the effective date of this section

solely because the applicable statute of limitations has or had expired is hereby revived and a cause of action thereon may be commenced provided that the action is commenced within one year of the effective date of this section."[12] The statute also provides that "[n]othing in this section shall be construed to alter the applicable limitations period of an action that is not time barred as of the effective date of this section." (§ 340.9, subd. (c).)

The court in *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247 (*20th Century*) held that that the phrase "law or contract" in section 340.9, subdivision (a) was intended to reach the policy's one-year contractual limitations period for actions against the insurer that was mandated by Insurance Code section 2071, and that the revival provision was not an unconstitutional impairment of the insurer's contract rights. (*Id.* at pp. 1270-1273, 1276-1277.) In discussing why section 340.9 was designed to reach the contractual limitations period, the *20th Century* court said the legislative history made it clear that the Legislature intended to remedy the harm caused by that provision. Therefore, the term " 'applicable statute of limitations' was simply a generic reference to the limitations period that the Legislature intended to reach by its enactment of section 340.9. Such generic use of the term was no different than the 'lawyer's shorthand' utilized by 20th Century itself when it demurred to [the plaintiff's] pleadings on the ground that the '*statute of limitations contained in the insurance policy*' had expired." (*Id.* at pp. 1276-1277, original italics, fn. omitted.)

In another contract impairment case arising out of section 340.9, the court in *Rosenblum v. Safeco Ins. Co.* (2005) 126 Cal.App.4th 847, 858, held that the provision "did nothing more than reopen the filing window, for a one-year period, to those *otherwise viable* cases that had become time-barred." (Original italics.)

Taken together, the *Rosenblum* and *20th Century* decisions hold that section 340.9 was designed to revive for one year only claims that, but for the *pre-existing* limitations

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12 While section 340.9, subdivision (a) applies to claims that were barred as of that provision's effective date, section 340.1, subdivision (c) applies to claims otherwise barred as of January 1, 2003. However, because January 1, 2003, was the effective date of the 2002 amendments to section 340.1, we see no meaningful difference between the two provisions.

period, would be time-barred. Section 340.1 should be interpreted in the same way. When the Legislature passed the 2002 amendments to section 340.1, it obviously intended to remedy the harm caused by the age 26 cut-off date in the then-existing statute of limitations, but as to only the limited group of claims defined by subdivision (b)(2), the nonabuser who failed to take reasonable steps to guard against known or suspected child molesters. Thus, the age 26 cut-off of former subdivision (b) from the 1998 amendment that had been in place until the 2002 amendments took effect *was* the applicable statute of limitations by which subdivision (b)(2) claims would otherwise be barred as of January 1, 2003. (*V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 512 [subdivision (c) "has limited application to the revival of certain actions that were barred by the applicable statutes of limitations before the 2002 amendments to section 340.1 became effective."].)

Complementing this is subdivision (c)'s provision that notwithstanding any other provision of law, "*any claim*" covered by subdivision (b)(2) that "*would otherwise be barred*" as of January 1, 2003, solely because the applicable limitations period had expired was revived and "*in that case,* a cause of action may be commenced within one year of January 1, 2003." (Italics added.)

The limitations period in place through December 31, 2002, for claims against all nonabuser entities was a victim's 26th birthday. Therefore, as of January 1, 2003, there were three groups of child molestation victims whose claims against nonabusers had already expired and were therefore *otherwise barred* under the then-applicable limitations period: (1) those over age 26 who had made discovery more than three years earlier; (2) those over age 26 who had made their discovery less than three years earlier; and (3) those who had turned 26 and had not made discovery at all. We believe the Legislature meant what it said when it provided that "any claim" falling under subdivision (b)(2) was revived by subdivision (c), but for one year only. As a result, it must have included the appellants here, who fall into the third category.

Appellants do not dispute that their claims were time-barred years before subdivisions (b)(2) and (c) took effect. Under subdivision (c), therefore, their claims

were revived, "and, in that case, a cause of action may be commenced within one year of January 1, 2003." (§ 340.1, subd. (c).) The plain meaning of this language required appellants to bring their newly-revived claims during the one-year revival period. (*Shirk, supra,* 42 Cal.4th at p. 208 [subdivision (b)(2) claims that were already time barred were revived by subdivision (c) "for the year 2003"].) In short, if any subdivision (b)(2) cause of action was time-barred by January 1, 2003, and was not brought by January 1, 2004, it was thereafter barred again.

As for subdivision (c)'s statement that it shall not be construed to alter the applicable statute of limitations period of actions that were not time-barred as of January 1, 2003, it is the general rule that a new statute of limitations that enlarges a limitations period applies to actions that are not already barred by the original limitations period when the new law takes effect. (*Andonagui v. The May Dept. Stores Co., supra,* 128 Cal.App.4th at p. 440.) We conclude that this language was the Legislature's plainly-stated way of invoking that rule, and means only that subdivision (b)(2) claims that pre-dated January 1, 2003, and which were not already barred on that date under the previous limitations period were now subject to the newly enlarged limitations period. The language in its express terms does not apply to claims that were already barred.

After putting our statutory creature back together, we therefore conclude: (1) appellants' causes of action were time-barred under the then-existing statute of limitations years before the 2002 amendments took effect on January 1, 2003, even though they allegedly had not yet made discovery, because appellants were 26 or older as of January 1, 2003; (2) subdivision (c) revived their claims as of January 1, 2003, but only for one year; and (3) their failure to sue during that period left their claims time-barred once more.[13]

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[13] Because subdivision (b)(2) is a remedial statute (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 536), and because the limitations period has been repeatedly enlarged several times, appellants contend section 340.1 must be liberally construed to permit their actions. We do not doubt the very important remedial purpose of this statute and have no quarrel with the liberal construction rule as a general principle of statutory interpretation in this field. However, the rules of statutory construction and the language chosen by the

B. Appellants Misread the Legislative History

Appellants rely on portions of the legislative history to support their interpretation of subdivision (c). The first is an example found throughout the legislative history describing why the amendments are necessary: After noting that many childhood sex abuse victims do not manifest trauma until well after their 26th birthday, the statement reads: "For example, a 35-year old man with a 13-year old son involved in many community and sporting events, may begin to relive his nightmare of being molested by an older authoritarian figure when he was 13 years old and about to enter puberty." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1779 (2002-2003 Reg. Sess.) as amended June 17, 2002, pp. 3-4.)

Appellants conclude that this example validates their interpretation of the retroactive scope of subdivision (c). However, we read this as describing the *prospective* effect of the new limitations period. For instance, although the example mentions a childhood molestation victim who only makes discovery when he is 35, it does not also describe that hypothetical plaintiff as someone whose action was time-barred years before. Instead, the bill analysis discusses retroactivity immediately after the cited example, with the report noting that the bill also provided that "notwithstanding any other provision of law, any action for damages against a third party as provided above which is barred as of January 1, 2003, solely because the applicable statute of limitations has expired, is revived and a cause of action thereupon may be brought if commenced within one year of January 1, 2003. [¶] This bill further would provide that its one-year

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Legislature still set the boundaries of the rule of liberal construction. Even here, where the remedial purpose is apparent, we may not read into the statute provisions that were not included, or read out those that were. (*Di Genova v. State Bd. of Ed.* (1962) 57 Cal.2d 167, 173 [express legislative declaration that statute be liberally construed does not confer retroactive effect]; *Slocum v. State Bd. of Equalization* (2005) 134 Cal.App.4th 969, 976-977, & fn. 5; *Davis v. Harris* (1998) 61 Cal.App.4th 507, 512.) As set forth above, we conclude that the plain statutory language itself precludes appellants' actions because they did not bring them during the revival period. No construction, liberal or otherwise, is necessary.

window period shall not alter the applicable limitations period of an action that is not time-barred as of January 1, 2003, and shall not apply to either" claims made final after litigation on the merits or by settlement. (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1779 (2002-2003 Reg. Sess.) as amended June 17, 2002, p. 3.)

In sum, because this report discusses the retroactive effect of the amendments separately from the example that appellants rely upon, the example does not apply to the retroactivity analysis.

The next example cited by appellants comes from an eight-page analysis of the 2002 amendment prepared for the Senate Judiciary Committee. Under the subheading "Extending limitations period past age 26 and reviving time-barred actions for one-year window period has precedent," the report states: "In other words, this bill would provide those victims who discovered that adulthood trauma after age 26, whose action has been barred by the current statute of limitations, a one-year window to bring a case against a third party that otherwise would be time-barred." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1779, as amended May 2, 2002.) Appellants read this to mean that only victims who made discovery before January 1, 2003, were required to sue during the one-year revival window.

However, this passage appears immediately after the following: "This bill would provide that, notwithstanding any other provision of law, any action for damages against a third party (as provided above) which is barred as of the effective date of this bill solely because the applicable statute of limitations has expired, is revived and a cause of action thereupon may be brought if commenced within one year of the effective date of this bill." As set forth above, among the claims barred by the previous limitations period were those of victims who had turned 26 and had not yet made discovery. In fact, the plight of such victims was described as one of the key reasons the 2002 amendment was required. In the same report, under the heading "Stated need for legislation," the report notes that the then-current version of section 340.1 cut off all claims once a victim turned 26 even though "for many victims their adulthood trauma does not manifest itself until

well after their 26th birthday . . . ." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1779, as amended May 2, 2002.)

In short, the Legislature knew that victims who had not yet made discovery were barred under the then-existing limitations period, but elected to revive for only one year "any claim" falling under subdivision (b)(2) that had been barred by the previous statute of limitations.

The language quoted by appellants also appears elsewhere in the legislative history. A 12-page analysis by the Assembly Judiciary Committee states: "This bill applies retroactively and provides victims of childhood sexual abuse a one-year window to bring an action against a third party when that claim would otherwise be barred solely because the statute of limitations has or had expired and when the third party knew of prior claims of abuse but failed to act to prevent future abuse. [¶] Under the measure, such a claim would be revived and a cause of action may be brought if commenced within one year of January 1, 2003. . . . In other words, this bill would provide those victims who discovered their adulthood trauma after age 26, whose action has been barred by the current statute of limitations, a one-year window to bring a case against a third party that otherwise would be time-barred." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1779 (2002-2003 Reg. Sess.) as amended June 6, 2002, p. 7, italics added.) When read in full, this portion of the legislative history simply mirrors the language of subdivision (c): claims that would otherwise be time-barred under the previous limitations period were revived for one year only. No exception is made for plaintiffs who had not yet discovered that adult-onset psychological harm was linked to a childhood molestation incident. Indeed the proximity of the word "retroactively" to the one-year revival period demonstrates the limited nature of the retroactive effect of the legislation, not the broad retroactivity suggested by appellants.

The final piece of legislative history cited by appellants comes from an undated analysis that gives no indication by whom, or for whom, it was prepared, or that otherwise shows it is a proper subject of judicial notice. (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 [views of individual legislators not judicially

noticeable]; *State Compensation Ins. Fund. V. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 5, 10, fn. 3 [judicial notice improper if documents not properly identified]; *Kaufman Broad Communities, Inc. v Performance Plastering Inc.* (2005) 133 Cal.App.4th 26, 30-31.) Appearing under the heading "WHO CAN SUE AFTER THE BILL PASSES, AND WHEN," the report states: "People who discover their adulthood trauma from the molestation after the effective date of the bill will have three years from the date the victim discovers or reasonably should have discovered that the adulthood trauma was caused by the childhood abuse."

According to appellants, this definitively shows that plaintiffs whose claims were time-barred under the old statute of limitations because they had turned 26, even though they had not yet made discovery, could bring their actions after the one-year revival window closed. A full reading of the document shows otherwise. The quoted language is under the subheading "Prospective application," which falls under the general subject heading "WHO CAN SUE AFTER THE BILL PASSES, AND WHEN." As mentioned earlier, amendments to statutes of limitation apply prospectively *from the date they take effect.* (*City of Bellflower v. Bellflower County Water Dist., supra,* 247 Cal.App.2d at p. 350.) Therefore, the language appellants rely on does not concern the amendment's retroactive effect.

Instead, immediately under that general heading, and immediately before the subheading and discussion concerning prospective application, is the subheading "Retroactive application and revival of lawsuits." Within that subheading, the document states: "Like the Northridge Earthquake bill, this bill would create a one-year window for victims to bring a lawsuit *that would otherwise be barred by the age 26 limitation.*" (Italics added.) When both subsections are read together and in context, they also show that discovery made after the revival window closed would make timely only those actions that were not time-barred before the 2002 amendments took effect. As to those

that were time-barred, if not brought during the revival period, they were thereafter precluded.[14]

4. The Reenactment of Subdivision (u) Did Not Restore Appellants' Claims

Appellants contend the Legislature's reenactment of subdivision (u) as part of the 2003 amendments shows their claims could still be brought because they were filed after 1999 and because they did not make discovery until after the expanded limitations period took effect in January 2003. In order to understand this argument, we must first recount the applicable statutory history.

As discussed, until 1998 the limitations period for childhood molestation claims against nonabuser entities was one year, extended to the victim's 19th birthday by section 352. In 1998, the Legislature for the first time provided in section 340.1 for an extended limitations period against nonabusers up until the plaintiff's 26th birthday. This limitations period applied in two instances: (1) to negligent nonabusers; and (2) to intentional nonabusers. (§ 340.1, subd. (a)(2), (3).) The longer limitations period of the *later* of age 26 or three years from discovery that applied to those who actually committed the molestation was set forth in *subdivision (a)(1)*.

In 1999, the Legislature enacted subdivision (s) (now subdivision (u)), which clarified that the 1998 amendments "shall apply to any action commenced on or after January 1, 1999, and to any action filed prior to January 1, 1999, and still pending on that date, including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999. Nothing in this subdivision is intended to revive actions or causes of action as to which there has been a final adjudication prior to January 1, 1999."[15]

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14 This last reference to section 340.9 also supports our earlier contention that section 340.1 should be interpreted the same as the Northridge Earthquake claims provision.

15 At least for separation of power purposes, a final adjudication occurs when the last court within a judicial system rules on a case. (*Perez v. Richard Roe 1* (2006) 146 Cal.App.4th 171, 187 [section 340.1, subdivision (c) revival window violated

When the Legislature passed the 2002 amendments at issue here, it did not repeal or delete subdivision (s). Instead, it retained that provision and reenacted it as subdivision (u). Appellants contend that because subdivision (u) conferred retroactive effect on subdivision (a)(2) (negligent nonabuser) and (a)(3) (intentional nonabuser) cases that were then pending, its reenactment in 2003 along with the newly-enacted subdivision (b)(2) (negligent nonabusers who knew of the perpetrator's potential to molest and failed to take reasonable safeguards) shows that the Legislature intended subdivision (u) to apply to subdivision (b)(2) cases filed after *January 1, 1999*. Thus, according to appellants, the plain language of the entire statute shows their claims were timely. If not interpreted in this manner, they contend, subdivision (u) is surplusage because it serves no other purpose.

Appellants overlook that the 1998 amendments imposed an age 26 cap on all claims against nonabusers, without regard to when discovery occurred. If appellants are correct, then even though in 2002, the Legislature expressly revived *all* lapsed subdivision (b)(2) claims for one year pursuant to subdivision (c), it also chose to silently revive a limited subcategory of those claims – where plaintiffs were over 26 but had not yet discovered the link between the molestation and their adulthood emotional harm – by way of reenacting a then three-year-old provision that was designed to clarify the prospective reach of the 1998 amendments that set an age 26 limit on claims against *all* nonabusers. We do not believe the Legislature would take such a convoluted approach.

Instead, the Legislature has demonstrated that when it wants to make amendments to section 340.1 retroactive, it will do so clearly and expressly. In 1994, the Legislature added what is now subdivision (r), which states that the 1990 amendments applied to "any action commenced on or after January 1, 1991, including any action otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991." (Stats. 1994, ch. 288, § 1.) Subdivision (c) is just as clear.

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separation of powers doctrine to extent it sought to revive actions that had been concluded by trial or dispositive judicial ruling].)

Had the Legislature intended to permit appellants' claims, it should have, and we believe it would have, done so in equally clear and unmistakable terms. For instance, the Legislature could have written subdivision (c) to state that any subdivision (b)(2) claims of those plaintiffs 26 or older who had not yet made discovery were revived *and* the new limitations period did not begin to run until discovery occurred.

Appellants rely on *Bouley v. Long Beach Memorial Medical Center* (2005) 127 Cal.App.4th 601 (*Bouley*) to support their contention that the Legislature's retention of subdivision (u) shows that it intended to make the new limitations period of subdivision (b)(2) retroactive. As set forth below, *Bouley* is inapplicable.

At issue in *Bouley* was a 2002 amendment to section 377.60 that conferred standing in wrongful death actions to domestic partners of a decedent. (§ 377.60, subd. (a); *Bouley, supra,* 127 Cal.App.4th at p. 606.) After that amendment took effect, plaintiff sued for the 2001 wrongful death of his domestic partner. Defendants' demurrers were sustained, and the action was dismissed, when the trial court ruled the plaintiff lacked standing to sue under the law in effect when his partner died. The *Bouley* court reversed, relying in part on a 1997 amendment to section 377.60 that gave parents standing to sue for the wrongful death of their children, and which stated that "this section" (§ 377.60) applied to any cause of action arising on or after January 1, 1993. (§ 377.60, subd. (d).) When the Legislature reenacted subdivision (d) along with the amendment giving standing to domestic partners, it must have intended to apply that retroactivity provision to the domestic partner amendment, the *Bouley* court held. (*Bouley,* at p. 607.)

Based on this language from *Bouley,* appellants contend the same should be true for subdivision (u) of section 340.1. We disagree. First, *Bouley* relied on *People v. Bouzas* (1991) 53 Cal.3d 467 (*Bouley, supra,* 127 Cal.App.4th at p. 607), which only noted the well-established rule that legislative reenactment of a statute that has been judicially construed without change is deemed to be legislative adoption of that construction. (*Bouzas,* at p. 475.) That is not the issue raised as to subdivision (u).

Next, the statutory language involved in *Bouley* is critically different. The 1997 amendment at issue in *Bouley* was a blanket statement that section 377.60 in its entirety applied to any cause of action arising on or after January 1993. (§ 377.60, subd. (d).) As discussed above, subdivision (u) of section 340.1 applies solely to the 1998 amendment that imposed an age 26 cap on all claims against nonabuser entities without the distinction created four years later by subdivision (b)(2). Because subdivision (c) is section 340.1's lone express indicator of retroactive effect, subdivision (u) cannot logically be read as plaintiffs contend.[16]

5. *Common Law Equitable Delayed Discovery No Longer Applies*

Because appellants allege they only recently came to recognize the wrongful nature of Father Koerner's actions, they contend that their claims did not accrue until that time, pursuant to the common law doctrine of equitable delayed discovery. (See *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397-398.) Earlier versions of section 340.1 expressly permitted the use of that doctrine. (See former subdivision (d) of the 1986 version and former subdivision (l) of the 1990 version of section 340.1.) In 1994, however, those provisions were removed when the statute was amended and a statutory delayed discovery rule was first put in place as to perpetrators. (See Historical and Statutory Notes, 13C West's Ann. Code Civ. Proc. (2006 ed.) foll. § 340.1, pp. 172-173.) We therefore presume the Legislature intended to supplant common law delayed

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16 The *Bouley* court reversed for another reason: a 2005 amendment to section 377.60 that took effect while the case was pending on appeal expressly stated that those who could establish their qualifications as domestic partners could sue for deaths occurring before January 1, 2002. (§ 377.60, subd. (f)(1) & (2); *Bouley, supra,* 127 Cal.App.4th at pp. 607-608.) Therefore, *Bouley's* discussion of the 1997 amendment was arguably dicta.

Appellants also rely on *Armijo v. Miles* (2005) 127 Cal.App.4th 1405, 1412-1413, decided shortly after *Bouley*. The *Armijo* court also held that the Legislature's reenactment of section 377.60, subdivision (d)'s retroactivity provision when it amended the statute to confer standing on domestic partners made the new standing rule retroactive. Because the language of the relevant portions of section 377.60 is vastly different from those at issue under section 340.1, *Armijo* is equally inapplicable.

discovery with the statutory rule it put in place as of 1994. (*City of Irvine v. Southern California Ass'n of Governments* (2009) 175 Cal.App.4th 506, 522 [when the Legislature deletes an express provision in a later amendment related to the same subject matter, that deliberate omission indicates a different intention that may not be changed by judicial construction]; *K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1242 [§ 340.1 codified the delayed discovery rule].)

Appellants cite *Evans v. Eckelman* (1990) 216 Cal.App.3d 1609, 1616-1617 for the proposition that common law delayed discovery applies to sex abuse claims governed by section 340.1. Because that decision concerned the pre-1994 version of the statute, which still expressly permitted use of that doctrine, it is inapplicable. Likewise, appellants err by relying on *California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297 and *Goodman v. Zimmerman* (1994) 25 Cal.App.4th 1667, 1676 for the proposition that statutes should not be interpreted to alter the common law unless it is expressly provided. Both decisions dealt with the interpretation of statutory language that was deemed to track or be consistent with long-standing common law principles. Neither concerns the rule upon which we rely – that when the Legislature deletes a provision, we presume the Legislature intended to change the existing law.

6. *Perpetrator Liability Theories*

Finally, appellants contend they may take advantage of the longer three years from discovery limitations period provided by subdivision (a)(1) because respondents are allegedly liable as perpetrators. They base this on two theories: (1) vicarious liability under the doctrine of respondeat superior; and (2) because respondents allegedly procured them as victims for Koerner in violation of Penal Code section 266j. (See § 340.1, subd (e), which defines childhood sexual abuse to include violations of Penal Code section 266j.)

As to both contentions, the longer limitations period applicable to actions against direct perpetrators is expressly limited to actions "against any *person* for committing an act of childhood sexual abuse." (§ 340.1, subd. (a)(1), italics added.) Because the

liability of *entities* for wrongful or intentional acts is separately provided for by subdivision (a)(2) and (3), we hold that appellants may not invoke the longer limitations period of subdivision (a)(1) against respondents.

Furthermore, respondeat superior liability is not available because the alleged abuse was committed outside the scope of Koerner's employment. (*Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1004-1005, citing *Jeffrey E. v. Central Baptist Church* (1988) 197 Cal.App.3d 718, 721 [church not liable under respondeat superior theory for minor's sexual abuse by religious school teacher]; *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 218, fn. 11; *Mark K. v. Roman Catholic Archbishop* (1998) 67 Cal.App.4th 603, 609.)[17]

As to the procurement charge, even if the longer perpetrator limitations period of subdivision (a)(1) applied to entities, and even if an entity could be subject to criminal liability for violating Penal Code section 266j, appellants have not alleged a violation of that section. Criminal procurement of a child occurs when someone "intentionally gives, transports, provides, or makes available, or who offers [to do so] to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in [Penal Code] Section 288, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person . . . ." Appellants contend, without elaboration, that they alleged a violation of this statute. Although they cite to the record for the location of their allegations, they do not recite their allegations or discuss and analyze how they might show a violation of Penal Code section 266j. Accordingly, the issue is waived. (*Landry v, Berryessa Union School Dist., supra*, 39 Cal.App.4th at pp. 699-700.)

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17 Appellants state in a footnote that perpetrator liability could apply under the theory of ratification, where an employer fails to respond to allegations that an employee committed an intentional tort. However, this bare bones assertion is unsupported by citations to the record, or discussion and analysis of the relevant authorities, and we therefore deem it waived. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) We also note that appellants did not raise the issue in the trial court when opposing respondents' demurrers.

Alternatively, we hold that their allegations are inadequate to state a violation of Penal Code section 266j. The statute is violated when a defendant intentionally causes or induces a child to engage in sex acts with another, or when the defendant intentionally provides or makes a child available for those purposes. However, the first amended complaint does not allege that respondents acted with that intent. Instead, it alleges that respondents: created an environment where children were encouraged to trust Koerner; caused and induced appellants to take part in church activities with Koerner; and, despite their knowledge that Koerner was molesting children, continued to foster that trust and encourage appellants and others to spend time alone with Koerner. Although such allegations, if true, show an inexcusable indifference to the safety of children attending Koerner's parish, they do not show that respondents actually intended for Koerner to have sex with appellants.

DISPOSITION

The judgment of dismissal is affirmed. Respondents shall recover their appellate costs.

RUBIN, ACTING P. J.

I CONCUR:

FLIER, J.

Grimes, J., Dissenting

I respectfully dissent.

This case requires the court to construe the statute of limitations for childhood sexual abuse claims, specifically, claims against nonabuser entities who failed to take steps to safeguard minors from known or suspected molesters. The majority holds, as it did in *Hightower v. Roman Catholic Bishop of Sacramento* (2006) 142 Cal.App.4th 759, that the delayed discovery provision of the statute does not apply to ***any*** victim who reached his 26th birthday before January 1, 2003, and who did not sue during the one-year revival period provided by the statute -- ***whether or not*** the victim had discovered or should have discovered the cause of his injuries. I cannot agree with the majority and would hold that the statute bars only those claims of persons age 26 or older who had discovered the cause of their injuries but did not sue during the one-year revival period.

The majority has ably described the many permutations through which the statute reached its current state. But our concern here is only with the 2002 amendment and its application to claims against a third party nonabuser on notice of sexual abuse (a defendant who knew or had reason to know of unlawful sexual conduct by an employee and who failed to take reasonable steps to avoid such conduct by that person in the future). (Code Civ. Proc., § 340.1, subds. (a) & (b).)[1] Before the 2002 amendment, which became effective on January 1, 2003, claims against such defendants (to whom I will refer as nonabusers on notice) were barred after a plaintiff's 26th birthday. But as of January 1, 2003, a plaintiff claiming damages against a nonabuser on notice must sue before his 26th birthday ***or*** within three years of the date he discovers (or reasonably should have discovered) that psychological injury occurring after the age of majority was

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1 All statutory citations are to the Code of Civil Procedure.

caused by the sexual abuse, whichever is later.[2] (*Ibid.*) The 2002 amendment, to the details of which I now turn, also provided for the revival, for one year only, of claims against nonabusers on notice that would otherwise have been time-barred. (*Id.*, subd. (c).) It is the construction of this provision that is at the heart of my disagreement with the majority.

1. The 2002 Amendment

The 2002 amendment is "a remedial statute that the Legislature intended to be construed broadly to effectuate the intent that illuminates section 340.1 as a whole; to expand the ability of victims of childhood sexual abuse to hold to account individuals and entities responsible for their injuries." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 536.) The 2002 amendment, as relevant here, did two things.

First, as already noted, the 2002 amendment extended the statute of limitations in actions against a third party nonabuser beyond the plaintiff's 26th birthday, if the nonabuser "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 . . . ." (§ 340.1, subd. (b)(2), added by Stats. 2002, ch. 149, § 1.) As of January 1, 2003, claims against third party nonabusers on notice of unlawful sexual conduct by an employee may be brought "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 . . . ." (§ 340.1, subd. (a).)

Second, the 2002 amendment revived, for calendar year 2003 only, causes of action against such nonabusers on notice that "would otherwise be barred ***as of January 1, 2003***, solely because the applicable statute of limitations has or had

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2 This is the same limitations period that has applied to actual perpetrators of sexual abuse since 1991. (Code Civ. Proc., § 340.1, subd. (a); see *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 207.)

expired . . . ." (§ 340.1, subd. (c), italics and boldface added (the revival clause).) The revival clause provides, in its entirety:

> "Notwithstanding any other provision of law, any claim for damages [against nonabusers on notice such as the Doe entities] that would otherwise be barred ***as of January 1, 2003***, solely because the applicable statute of limitations has or had expired, is revived, and, in that case, a cause of action may be commenced within one year of January 1, 2003. *Nothing in this subdivision shall be construed to alter the applicable statute of limitations period of an action that is* ***not*** *time barred* ***as of January 1, 2003***." (§ 340.1, subd. (c), italics and boldface added.)

Thus the revival clause by its terms revives for one year claims that would otherwise be barred "as of January 1, 2003 . . . ."

2. This Case

The question in this case is the proper application of the 2002 amendment to actions filed after 2003 by plaintiffs who are 26 or older. The Doe entities say, and the majority agrees, that plaintiffs (who were well over the age of 26 on January 1, 2003, when the 2002 amendment became effective) were required to bring their suit during the 2003 revival period, because their claims had lapsed under former statutes of limitations in effect through December 31, 2002. Thus, the Doe entities say, John Roe 61's claim lapsed forever in 1979 (when he was 19), and John Roe 58's claim first lapsed in 1992 (when he was 19) and lapsed again and forever in 1999 (when he was 26 and did not take advantage of the expanded age limit enacted in 1998).

I believe the majority misreads the plain language of the revival clause. I do not agree that under the language of that clause, a claim ***that has not yet been discovered*** may be considered to have been barred "as of January 1, 2003," even though the new statute of limitations, effective on that date, expressly allows such undiscovered claims. Undiscovered claims are governed by the statute of limitations in effect "as of January 1, 2003," which allows such claims to be filed within three years of discovery. My

conclusion flows from the plain language of the statute and is confirmed by the legislative history of the 2002 amendment.

a. The plain language of the statute

The language of the one-year revival clause quoted above is unambiguous: it revives "any claim for damages [against nonabusers on notice] that would otherwise be barred ***as of January 1, 2003*** . . . ." And the revival clause clearly states it is not to be interpreted "to alter the applicable statute of limitations period of an action that is not time barred ***as of January 1, 2003***." (§ 340.1, subd. (c), italics and boldface added.) This means that on and after January 1, 2003, the statute of limitations *allows* a plaintiff to file suit within three years of discovering that his adulthood injuries were caused by sexual abuse, no matter how old he is when he makes the discovery. The one-year revival of actions that *are* time-barred "as of January 1, 2003, solely because the applicable statute of limitations has or had expired" applies only to plaintiffs who do not meet the terms of the newly extended statute of limitations, specifically, people who on January 1, 2003, were 26 or older *and* who discovered or reasonably should have discovered their injuries were caused by sexual abuse more than three years before filing suit.

In short, the 2002 amendment to the statute of limitations on its face extended the statute beyond age 26, for the first time, for plaintiffs who have not yet discovered their claims. The revival clause says in so many words it is not to be read to bar undiscovered claims, because it applies only to claims that are time-barred "as of January 1, 2003," *and* "*as of January 1, 2003*," *undiscovered claims are not time-barred until three years after discovery*. This, I believe, is the only reasonable interpretation of the 2002 amendment. It applies the extended statute of limitations according to its terms and it is congruent with the plain language of the revival clause.[3] In addition, my interpretation is consonant with the clearly expressed intent of the Legislature. I briefly address the latter point.

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[3] The majority invokes the principle that statutes are presumed to operate prospectively from the date they take effect. (See *Krupnick v. Duke Energy Morro Bay* (2004) 115 Cal.App.4th 1026, 1029 [" '[a]s a rule of statutory construction, it is

b. The legislative history

In my view the unambiguous language of the statute dictates the result in this case, but even so a court may look to legislative history for additional authority. (*Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 697.) The legislative history of the 2002 amendment entirely dispels any ambiguity concerning the meaning of the words, "any claim for damages . . . that would otherwise be barred as of January 1, 2003."

The purpose of the 2002 amendment was to eliminate the absolute time bar of a victim's 26th birthday in a suit against a nonabuser on notice of a perpetrator's previous sexual misconduct who took no action to protect children from future abuse by the perpetrator. The author of the amendment described the age 26 time bar as an "arbitrary limitation [that] unfairly deprives a victim from seeking redress, and unfairly and unjustifiably protects responsible third parties from being held accountable for their actions that caused injury to victims." (Sen. Com. on Judiciary, 3d reading analysis of Sen. Bill No. 1779 (2001-2002 Reg. Sess.) as amended June 17, 2002, p. 4.) Further:

> "Unfortunately for many victims, their adulthood trauma does not manifest itself until well after their 26th birthday, when some event in their current life triggers remembrance of the past abuse and brings on new trauma. [¶] For example, a 35-year old man with a 13-year old son involved in many community and sporting events, may begin to relive his nightmare of being molested by an older authoritarian figure when he was

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established that an enlargement of limitations operates prospectively unless the statute expressly provides otherwise' "]; cf. *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475 [" '[A] statute may be applied retroactively only if it contains express language of retroactivity *or* if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application' "].) These principles are not helpful to the majority view here, where the Legislature has eliminated the age 26 cut-off prospectively, for persons such as John Doe 58 and John Doe 61, who file suit within three years of discovering that childhood abuse was the cause of their adulthood injuries. As discussed in the text, the statutory language itself mandates that result, as does the legislative history.

13 years old and about to enter puberty." (Sen. Com. on Judiciary, 3d reading analysis of Sen. Bill No. 1779 (2001-2002 Reg. Sess.) as amended June 17, 2002, pp. 3-4.)

The entire point of the 2002 amendment was to eliminate an arbitrary age bar that prevented abuse victims from recovering against highly culpable third parties -- those who knew of previous misconduct and took no steps to protect other children from future abuse. The very example given -- which appears repeatedly in legislative reports on the 2002 amendment -- shows that the Legislature intended the amendments to apply to "a 35-year old man" who "begin[s] to relive his nightmare . . . ." Yet under the majority's reading of the statute, a person who was 26 or older when the 2002 amendment went into effect, and who does not discover the cause of his injuries until he is 35, is time-barred by the very statute whose purpose was to eliminate the bar. In my view, this cannot be, and is not, the case.

Other documents in the legislative history are to like effect. The discussion in another report for the Senate Judiciary Committee, after explaining that the bill would eliminate the age 26 limitation and apply a broader statute of limitations to suits against third party nonabusers on notice, described the one-year revival clause as follows: "In other words, this bill would provide those victims ***who discovered their adulthood trauma after age 26***, whose action has been barred by the current statute of limitations, a one-year window to bring a case against a third party that otherwise would be time-barred."[4] (Sen. Com. on Judiciary, Rep. on Sen. Bill No. 1779 (2001-2002 Reg. Sess.) as

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[4] In discussing whether the Legislature should revive such claims, the report observes: "According to the proponents, many of the victims that would be covered under this bill were abused for years during their childhood, enduring hundreds of assaults from employees or agents that the employer knew or had reason to know had committed past unlawful sexual conduct but failed to take reasonable steps to prevent future occurrences. . . . [¶] Moreover, claims of some victims were delayed because the employer withheld information from victims or lied to victims so the employer's negligence and wrongful conduct would not be discovered. This is a key distinction and policy justification for holding these wrongdoing employers liable past the victim's 26th

amended May 2, 2002, p. 5, italics and boldface added.) This report makes clear the revival clause applied only to claims discovered before the new statute became effective.[5]

In sum, I would hold that the claims of plaintiffs who were age 26 or older as of January 1, 2003, but who had not yet discovered the causal link between their childhood abuse and their adulthood injuries, are not barred by the statute of limitations.

GRIMES, J.

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birthday. In these cases, the evidence is not lost because the perpetrator of the abuse could not be found or his memories faded: Instead, the evidence is in the possession of the wrongdoing employer . . . ." (Sen. Com. on Judiciary, Rep. on Sen. Bill No. 1779 (2001-2002 Reg. Sess.) as amended May 2, 2002, pp. 6-7.)

[5] One other document is even more specific, although its provenance is less clear. It is a one-page document from among other Assembly Judiciary Committee documents. Under the heading, "WHO CAN SUE AFTER THE BILL PASSES, AND WHEN," the document states: "People who discover their adulthood trauma from the molestation after the effective date of the bill will have three years from the date the victim discovers or reasonably should have discovered that the adulthood trauma was caused by the childhood abuse." (Underscore omitted.)