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CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LINDA SHIRK, Plaintiff and Appellant, v. VISTA UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	D043697 (Super. Ct. No. GIC818294)

APPEAL from a judgment of the Superior Court of San Diego County, S. Charles Wickersham, Judge. Reversed with directions.

Ronquillo & Corrales, and Manuel Corrales, Jr. for Plaintiff and Appellant.

Stutz, Artiano, Shinoff & Holtz, William C. Pate, Daniel R. Shinoff, Jeffery A. Morris and Paul V. Carelli for Defendant and Respondent.

In this negligence action against the Vista Unified School District (District), plaintiff Linda Shirk alleges that years ago, as a teenage high school student, she was molested by a teacher then employed by the District, and that the District knew or must

have known of the alleged molestation at the time but failed to stop it, causing her psychological injury that was only recently discovered. (Code Civ. Proc.,[1] § 340.1.) The trial court sustained the District's demurrer without leave to amend due to Shirk's failure to file a timely governmental tort claim within six months of the accrual of her cause of action, as measured from the date the alleged molestation ended in 1979. (Cal. Tort Claims Act, Gov. Code, § 810 et seq.; hereinafter, the Tort Claims Act.)

Shirk appeals the judgment of dismissal, contending her complaint was timely filed within three years of the accrual of her negligence causes of action, as measured by section 340.1, allowing the bringing of an action and the revival of lost causes of action seeking compensation for childhood sexual abuse injuries. In her view, under this statute, she has successfully pleaded delayed accrual of her cause of action and adequate compliance with claims requirements, by alleging that she did not discover the alleged acts were the cause of her adult psychological injuries until she underwent a psychological examination in September of 2003. (§ 340.1, subd. (a)(2).) She also relies in part on 2002 amendments to the statute allowing persons over age 26 to sue employing entities under certain circumstances (§ 340.1, subd. (b)(2)), and further, on its provisions for the revival of lost claims. (§ 340.1, subd. (c).)

In this unique set of factual circumstances, we agree that Shirk has brought her pleadings within the scope of section 340.1 and reverse the judgment of dismissal, directing the trial court to enter a new order overruling the demurrer.

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1 All further statutory references are to the Code of Civil Procedure unless noted.

BACKGROUND

For purposes of analyzing the demurrer, the courts will accept as true the facts alleged in the complaint. (*John R. v. Oakland Unified School District* (1989) 48 Cal.3d 438, 441, fn. 1.) Shirk, now in her 40's, alleges that between May 1978 and November 1979, while ages 15 through 17, she was continuously sexually molested by a teacher employed by the District, Jeffrey Jones, on school premises, during school hours and school activities, and elsewhere. Another female student was also previously molested by Jones. Shirk contends that the District negligently supervised Jones and due to his readily discoverable failures to follow proper school policy, the District knew or should have known that he was sexually molesting her.

In June 2001, Shirk's 15-year-old daughter was attending the same school, where Jones still taught, and Shirk encountered Jones at school events. Shirk became very upset about what happened to her earlier in her life and reported the molestations to law enforcement officials. Jones met with her while she was wearing a law enforcement wire and he admitted these molestations occurred.[2]

On September 12, 2003, Shirk was examined by a psychologist who rendered the opinion that she had incurred psychological injuries due to this sexual molestation and it

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[2] Shirk has brought intentional tort claims against Jones and that portion of this action is proceeding separately. Although Jones pled guilty to criminal charges arising from these incidents, his conviction was reversed due to United States Supreme Court authority that ex post facto violations had occurred during the prosecution.

is the cause of her adult psychological injuries. Shirk filed this complaint on September 23, 2003 against Jones and the District. She alleged that she has adequately complied with governmental claims statutes. As against the District, she pled general negligence and negligent supervision of Jones.

The District brought a general demurrer to the complaint, contending it should not properly be subjected to vicarious liability for sexual battery and the claims were time-barred and not subject to extension under section 340.1. Lack of sufficient compliance with governmental tort claims requirements is also alleged.

Shirk opposed the demurrer and submitted declarations by an attorney and a psychologist, intended to comply with the certification requirements of section 340.1. (These certification requirements are not challenged here.)

The trial court issued a telephonic ruling, which was confirmed after oral argument. The District's demurrers were sustained without leave to amend and the complaint was dismissed. The order provides in pertinent part that (1) plaintiff was required to submit a claim at some point in 1980, and had not complied with the claims presentation procedure; (2) section 340.1 does not revive this action either with respect to the statute of limitations or the failure to present a timely claim. The court explained its reasoning as follows: Section 340.1, subdivision (c) makes no reference to claims requirements, but only statutes of limitations, and there are different policy reasons for the two procedural devices. Therefore, the court declined to interpret section 340.1 as also applying to claims presentation. The court stated:

> "Finally, the Legislature was certainly aware of the government claims presentation procedure when it enacted and amended section 340.1. Thus, this court must assume that the Legislature purposefully decided not to revive untimely claims (presumably it was unwilling to abrogate the special protections afford public entities), and the court is not at liberty to expand section 340.1."

The District obtained a judgment of dismissal pursuant to the demurrer ruling and Shirk appeals.[3]

DISCUSSION

I

INTRODUCTION AND ISSUES PRESENTED

For purposes of analyzing the ruling on demurrer, we take as true the allegations in the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We give the complaint a reasonable interpretation, reading it as a whole, its parts in their context, to determine whether sufficient facts are stated to constitute a cause of action. (*Ibid*.) For purposes of reviewing the trial court's construction of a statute, we resolve pure questions of law on a de novo basis. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

The issue of whether a plaintiff has pleaded sufficient facts to demonstrate or excuse compliance with governmental tort claims presentation requirements may

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[3] Although Shirk generally seeks an award of costs of appeal for "needless delay in the proceedings" due to the allegedly unmeritorious demurrer by the District, she has not requested sanctions. Our disposition will award the ordinary costs on appeal to Shirk.

appropriately be addressed in a general demurrer to a complaint. (See *State v. Superior Court* (*Bodde*) (2004) 32 Cal.4th 1234, 1239, 1244-1245 (*Bodde*).) Even where a plaintiff should have made such a claim, but did not, and the trial court erred in not requiring one, the trial court does not lack jurisdiction to proceed with that plaintiff's action against the governmental entity. (*Id*. at p. 1239, fn. 7.)[4]

Before we address Shirk's substantive arguments on appeal that her government claim and complaint were timely filed, we first take note that on appeal, the District appropriately concedes that the trial court's ruling was unduly restrictive insofar as it found the only timely claim that could have been filed would have been in 1980, immediately after the molestation incidents ended. We agree with the District that the trial court erroneously focused on Shirk's adolescent frame of mind during the 1979-1980 period, without adequately accounting for the express delayed accrual provisions of section 340.1. *Christopher P., supra,* 19 Cal.App.4th 165 was relied on by the trial court here to say that a cause of action normally "accrues" for purposes of claim presentment

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4 In *Bodde,* the court did not decide whether in that case there could exist an excuse from the claims requirements due to equitable estoppel against the governmental entity. (*Bodde, supra*, 32 Cal.4th 1234, 1245; see *Christopher P. v. Mojave Unified School District* (1993) 19 Cal.App.4th 165, 170 (*Christopher P.*) ["A public entity may be estopped from asserting noncompliance with the claims statutes where its agents or employees have deterred the filing of a timely claim by some affirmative act"].) Another equitable basis for the application of a delayed discovery rule has been developed in the governmental entity context, i.e., equitable tolling where the public entity received timely notice of a claim and sustained no significant prejudice, such as when an alternative action was brought in another forum. (1 Cal. Government Tort Liability Practice (Cont.Ed.Bar 4th ed. 2004) §§ 8.28, 8.29, pp. 394-396 ("CEB Treatise"); see *John R., supra,* 48 Cal.3d 438.) No such arguments are made here.

when the molestation actually occurs, since a victim who is an older child should immediately become aware of harm caused by sexual molestation. (See fn. 4, *ante*.) However, by focusing excessively upon Shirk's adolescent state of mind in 1979-1980, the trial court essentially disregarded all the relevant accrual provisions of section 340.1, which was error, as now properly conceded by the District.

Nevertheless, the District inconsistently continues to argue that any reliance by Shirk upon an equitable delayed discovery doctrine would be inappropriate (i.e., that since she was approaching adulthood when she was molested, she therefore must have known it was wrong and should not obtain any excuse for delay; see *Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405, 1420 (*Curtis*)). This is simply irrelevant for purposes of the required statutory construction of section 340.1, because Shirk does not actually appear to argue any such theory of equitable or nonstatutory delayed discovery.

Rather, under the statutory scheme of section 340.1, the appropriate focus on the facts as pled in the complaint should be whether Shirk's causes of action accrued, as alleged, in September 2003, when she received a diagnostic evaluation that her adult psychological injuries were caused by the earlier molestation incidents. We emphasize that Shirk is apparently relying upon a purely statutory claim of delayed accrual of her cause of action under the terms of section 340.1, and we will review the allegations of the complaint, in light of the statutory terms, accordingly. The issue is whether, as a matter of law, she may claim the protection of section 340.1 for statutory delayed accrual of her

cause of action, and accompanying substantial compliance with government tort claims requirements.

Before addressing the terms of the statute, we next seek to clarify that the District is not justified in arguing on demurrer that the only proper accrual date that can be gleaned from the face of the pleading is June 2001, when Shirk became upset and confronted the perpetrator Jones. The District claims that Shirk's admitted June 2001 emotional upset and acts of going to law enforcement authorities could, in the alternative, be considered to be her first knowledge of her claim. However, these allegations of the events of June 2001 are not pled in the complaint as constituting the type of discovery of causation of adult psychological injuries, as expressly referred to in section 340.1, subdivision (a), nor can we say as a matter of law that they amount to the same thing. We express no opinion on whether the District may in further proceedings seek to establish as a matter of law that Shirk's cause of action accrued in June 2001, on the theory that those events were the functional equivalent of the discovery of causation event specifically referred to in the statute. At this point, on demurrer, the only proper inquiry was whether Shirk could state a cause of action with adequate accrual allegations within the terms of section 340.1.

II

SECTION 340.1

As noted by the court in *Curtis T., supra*, 123 Cal.App.4th 1405, section 340.1 represents "very generous limitations periods for adults who belatedly realize 'that psychological injury or illness occurring after the age of majority was caused by the

sexual abuse' that occurred many years ago in childhood." (*Curtis T., supra,* at p. 1421.) In this section, the Legislature explicitly recognized that the comprehension of harm inflicted through childhood sexual abuse can be delayed even to adulthood. (*Ibid*.)

We are required to determine the relationship of this recently amended limitations statute, with its liberal pleading rules, to the standard governmental tort claims requirements that are much more restrictive in terms of timing, in light of the vicarious liability theory that is pled. Unfortunately, as recognized in the CEB treatise on Government Tort Liability, the authors of the Tort Claims Act in 1963 did not take the "late discovery" problem into account, nor provide any clear-cut procedures for dealing with it, other than providing for late claims relief within a relatively short time frame (unavailable here). (CEB Treatise, *supra,* § 6.22, pp. 266-267.)

To determine whether this complaint states a cause of action for the plaintiff's injuries attributable to a perpetrator's childhood sexual abuse, against a public entity employer of the perpetrator, under a vicarious liability theory, in light of the allegation that a governmental claim was not brought until September 2003, we will consider not only the statutory language but also the legislative history of section 340.1, with attention to the addition in 1998 of its vicarious liability language against an "entity." (§ 340.1, subd. (a)(2), (3).)

Section 340.1 sets forth special rules for establishing the limitations periods for an action to recover damages for injury suffered as a result of childhood sexual abuse. As originally enacted in 1986, it targeted bad acts only by family and household members. In 1990 amendments, actions against any such perpetrator were authorized (e.g.,

scoutmasters; see *Snyder v. Boy Scouts of America, Inc.* (1988) 205 Cal.App.3d 1318,1325; *Tietge v. Western Province of the Servites, Inc.* (1997) 55 Cal.App.4th 382, 385 (*Tietge*)). Section 340.1 initially provides in subdivision (a) that "the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or *within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse*, whichever period expires later . . . ." As explained by the court in *Debbie Reynolds Prof. Rehearsal Studios v. Superior Court* (1994) 25 Cal.App.4th 222, 231-234 (*Debbie Reynolds*), the purpose of this section is to allow victims of childhood sexual abuse "a longer time period in which to become aware of their psychological injuries and remain eligible to bring suit against their abusers." (*Id.* at p. 232.) As further explained in *Tietge*, *supra*, 55 Cal.App.4th at pages 387 to 388, "[t]he limitations period begins to run only after the victim, who is then an adult, appreciates the wrongfulness of the abuser's conduct."

In 1998, the Legislature expanded the scope of the limitations periods provided by section 340.1 to cover vicarious liability of an entity, to authorize, as relevant here: "(a)(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, *where a wrongful or negligent act by that person or entity was a legal cause of*

the childhood sexual abuse which resulted in the injury to the plaintiff." (§ 340.1, subd. (a)(2); italics added.)[5]

These limitations provisions must be read in light of the language of section 340.1, subdivision (b)(1), which generally prohibits the commencement of such an action "on or after the plaintiff's 26th birthday" (added in 1998, stats. 1998, ch. 1032, § 1). However, there is now an exception to this general rule, set forth in section 340.1, subdivision (b)(2) (added in 2002 and effective Jan. 1, 2003, stats. 2002, ch. 149, § 1): "This subdivision does not apply *if the person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person,* including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard." (Italics added.) Hence, plaintiffs over 26 years of age (such as Shirk) may now bring these vicarious liability actions under the specified circumstances.[6]

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5 Because Shirk is alleging only negligence claims against the District, we need not discuss here the related statutory provision in section 340.1, subdivision (a)(3) for an action based on intentional acts by a person or entity.

6 Although some versions of the bill would have allowed persons up to age 39 to bring such actions, in amendment the bill was changed to allow only persons up to age 26 to bring such actions. (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1651 (1997-1998 Reg. Sess.) as amended July 16, 1998, p. 1.)

The statute, as amended in 2002, next requires us to turn to the provisions of section 340.1, subdivision (c) as follows: "Notwithstanding any other provision of law, any claim for damages described in paragraph (2) or (3) of subdivision (a) that is permitted to be filed pursuant to paragraph (2) of subdivision (b) *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." (Italics added.)

As explained in 3 Witkin, California Procedure (4th ed. 1996) Actions, these 1998 amendments to section 340.1, subdivision (a)(2) and (3) do not create a new theory of liability. (§ 340.1, subd. (t), added in 1998 and relettered in 2002.) (3 Witkin, Cal. Procedure (2004 Supp.) Actions, § 546, p. 144.) However, they do make vicarious liability actions possible against a defendant other than the actual perpetrator of the abuse, based on a negligent act that was the legal cause of the abuse, and there must be a sufficient connection between the entity and the occurrence of the abuse such that it could have been prevented. (§ 340.1, subd. (a)(2); Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1651 (1997-1998 Reg. Sess.) as amended July 16, 1998, p. 4.)

Case law has interpreted the main delayed discovery provisions of the statute as intended to relate to injuries occurring after the age of majority. (*Lent v. Doe* (1995) 40 Cal.App.4th 1177, 1185.) In that case, a plaintiff adequately pleaded facts supporting delayed discovery where he alleged he suffered psychological injury and illness as an

adult resulting from defendant's (his uncle) earlier sexual misconduct, but he did not discover the connection between that illness and the defendant's acts of misconduct until adulthood, when he began counseling within three years before filing the action; also, the delay in discovering the connection was reasonable. (*Id.* at p. 1186.) There is no requirement in section 340.1 that, as a prerequisite to making a delayed discovery claim, a plaintiff have repressed the memories of the abuse, in order to plead such delayed discovery. (3 Witkin, Cal. Procedure (2004 Supp.) Actions, §§ 546-547, pp. 145-146.) Rather, the Legislature appears to have accepted the concept that a plaintiff may not be able to make the connection between early mistreatment and adult psychological problems until reaching adulthood and obtaining insights gained through, for example, counseling. The Legislature intended that qualifying plaintiffs should be able to take appropriate legal action at that time, according to the terms of the statute.

The initial portion of section 340.1, subdivision (a) thus defines the accrual date of such an action as the date the plaintiff discovers (or should have discovered) *the causation of* the adult psychological injury from the earlier sexual abuse. By adding subdivision (a)(2), the Legislature obviously intended to allow plaintiffs to bring actions against certain entities who owed a duty of care to the plaintiff, if the entity's negligent act was a legal cause of the injurious sexual abuse. The legislative history discloses that this vicarious liability provision was added in 1998 in response to certain cases that interpreted the original version of section 340.1 as authorizing an action against and thus applying only to the individual perpetrator of the abuse. (*Debbie Reynolds, supra,* 25 Cal.App.4th 222, 231-234 [private dance studio]; *Tietge, supra,* 55 Cal.App.4th 382, 387-

388 [religious organization and school].) Those cases held that section 340.1 originally only enlarged the statute of limitations as to the actual perpetrators of the abuse, and not with regard to any negligence of the employers of such abusers, due to the principle that at that time "section 340.1 applies only to intentional acts of sexual abuse, and does not apply to actions seeking damages for negligent acts." (*Tietge, supra,* at pp. 387-388.)

The legislative history of the 1998 amendments discloses that the proponents of the amendment to allow vicarious liability were suggesting that churches and private schools, as well as some public schools, might harbor individual perpetrators of abuse, and might be negligent if they did not discover and prohibit such behavior. (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1651 (1997-1998 Reg. Sess.) as introduced Jan. 8, 1998, pp. 3-6.) The proponents wanted the responsible parties, not the government program Medi-Cal, to pay for treatment of injured persons. (*Id*. at p. 5.) The opponents of the amendment were responding, based on the analysis in *Debbie Reynolds, supra,* 25 Cal.App.4th 222, 231-234, that private businesses and the economy would suffer if innocent employers were held liable for the bad acts of individual perpetrators on a vicarious liability basis, and any case, the repressed memory theory was not universally accepted. (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1651 (1997-1998 Reg. Sess.) as amended July 16, 1998, pp. 3-5.)

Eventually, in 1998, the Legislature passed the amendment to allow vicarious liability of such entities where there was a sufficient connection between the employment and the occurrence of the molestation, but it did not expressly clarify how the amendment was to interact with existing government tort claims requirements applicable to public

entities who might be such employers. (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1651 (1997-1998 Reg. Sess.) as amended July 16, 1998, p. 4.)

Also, the legislative history of the 2002 amendments (adding subd. (c) and, in subd. (b)(2), lifting the bar on an over-26-year-old plaintiff suing if vicarious liability allegations can be made against an entity that employed the molester which had reason to know of such proclivities) discloses that the Legislature was made aware through the comment and amendment process that entities that bore a duty of care to third parties for the conduct of employees engaging in acts related to employment might include "a school district, church, or other organization engaging in the care and custody of a child," such that a duty of care is owed to the child to reasonably ensure its safety. (Assem. Com. on Judiciary, Analysis of Sen. Bill 1779 (2001-2002 Reg. Sess.) as amended June 6, 2002, pp. 6, 10.)

III

GOVERNMENT TORT CLAIMS PRESENTATION REQUIREMENTS AND STATUTES OF LIMITATIONS

We accordingly seek to determine the interplay of the government tort claims requirements and the language of section 340.1. When the Legislature amended section 340.1 in 1998, to allow vicarious liability allegations against employing entities, did it show any intent about the treatment of government entities, ordinarily entitled to require governmental claims against them, for purposes of applying delayed discovery principles? Further, does the 2002 amendment to section 340.1, subdivision (c), allowing

a one-year window reviving old actions, have any impact upon the Tort Claims Act applying to public entities, such as a school district, with regard to claims requirements?

Under Government Code section 901, in order to compute the time limits for bringing a governmental tort claim (pursuant to Gov. Code, §§ 911.2, 911.4, 912 & 945.6), "the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon." As explained in the CEB treatise, this language borrows for tort claims purposes the law that has been developed in civil actions for accrual of a claim. (CEB Treatise, *supra*, § 6.21, pp. 265-266; § 6.15, p. 260.) "The date of accrual [of a cause of action] marks the starting point for calculating the claims presentation period." (*Ibid*.) "Ordinarily, this is simply the date of injury. But some cases, particularly those involving continuing injuries or late discovery, present a more complex picture. *If in doubt, the practitioner should consult the considerable body of law that defines the accrual date for a like action against a private party*." (*Ibid.*, citing, e.g., *Mosesian v. County of Fresno* (1972) 28 Cal.App.3d 493; italics added.)

These treatise writers also observe that the claims presentation time limits contain no authorization for tolling or extending presentation periods due to a claimant's minority or disability, other than the usual late claim procedures. (CEB Treatise, *supra*, § 6.25, p. 271.) Government Code section 911.2 ordinarily requires that personal injury claims against an entity be filed "not later than six months after the accrual of the cause of

action." Alternatively, a late claim may be presented within a reasonable time after accrual, not to exceed one year. (Gov. Code, § 911.4.) If the application is denied, a plaintiff may petition the court for an order relieving her from the claims presentation requirement. (Gov. Code, § 946.6.) No action for money damages may be brought against a public entity until a written claim has been presented to the entity and acted upon, or relief is granted from the claims requirements. (Gov. Code, §§ 905, 945.4, 946.6; but see *Bodde, supra,* 32 Cal.4th at p. 1239, fn. 7.)

As noted by the trial court, the purposes of the claim filing requirement are: "(1) to give notice to the public entity so it will have a timely opportunity to investigate the claim and determine the facts; and (2) to give the public entity an opportunity to settle meritorious claims thereby avoiding unnecessary lawsuits." (*San Diego Unified Port Dist. v. Superior Court* (1988) 197 Cal.App.3d 843, 847.) By requiring advance knowledge of potential claims, the claims statute provides an opportunity to the public entity to, e.g., "quickly rectify a dangerous condition and further provides an opportunity for the entity to take the potential claim into account in its fiscal planning." (*Ibid.*) The trial court observed that although claims requirements function in part like statutes of limitation, "[t]he statutory requirements for an early presentation of a claim are thus not mere statutes of limitation" (quoting the CEB Treatise, *supra,* § 5.6, p. 169). The trial court thus distinguished between claims presentation procedures and statutes of limitations, and found section 340.1 did not extend the time for claims presentations.

However, the trial court did not take note that the same treatise writers on which it relied go on to observe in the same section: "The claims-presentation requirements do,

however, function in part like statutes of limitation. [Citations.]" (CEB Treatise, § 5.6, p. 169.)

Again as observed by the treatise writers, "[i]n the public entity context, the late discovery rule usually applies in medical malpractice cases [citation], earth movement cases [citations], and child molestation cases when the parent had no reason to suspect wrongdoing [citations]. [¶] The late discovery rule may also apply in fraud cases." (CEB Treatise, *supra*, § 6.19, p. 263; see *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, 610-614 [medical malpractice].)[7]

From all these authorities and the legislative history, we conclude that even though the Legislature did not expressly mention governmental tort claims requirements when enacting and amending section 340.1, it was well aware throughout the comment and amendment procedure that expanding the applicable limitations periods for entities that might employ child abusers could potentially affect not only private schools, such as parochial schools, but also public schools or other public entities. In enacting the amendments, the Legislature sought to strike a balance between protecting a defendant's need for repose from stale claims and permitting, by express legislative provision, that certain important actions could be brought at any time. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading, analysis of Assem. Bill No. 1651 (1997-1998 Reg. Sess.) as

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7 In addition, the Legislature recently enacted a similar delayed discovery provision for victims of the Northridge earthquake. (§ 340.9; see *Rosenblum v. Safeco Ins.* (2005) 126 Cal.App.4th 847, 858 ["Section 340.9 did nothing more than reopen the filing window, for a one year period, to those otherwise viable cases that had become time-barred."])

amended Aug. 19, 1998, pp. 4-7.) When it did so, it did not take any action to prevent public entities from being subjected to such suits on a vicarious liability basis, or to make special rules regarding the application of claims requirements in this factual context. In particular, the language of section 340.1, subdivision (c) indicates a legislative intention to allow the revival provisions of section 340.1 to apply even to the highly regulated area of claims procedures for governmental entities, as found in the phrase: "*Notwithstanding any other provision of law*, any claim for damages described in paragraph (2) or (3) of subdivision (a) that is permitted to be filed . . . ."

We think that because the delayed discovery and accrual rules have been widely applied in other contexts when governmental entity defendants are involved (e.g., medical malpractice, § 340.5; earth movement; and relatively recent child molestation, such as *Christopher P., supra,* 19 Cal.App.4th 165), we must conclude that for purposes of applying this statute, the claims requirements of the Tort Claims Act are similarly extended in the manner that limitations periods in civil actions may be extended. We draw this conclusion from the language of Government Code section 901, borrowing the rules for accrual dates in civil actions for government claims purposes. Also, since the Tort Claims Act does not deal specifically with the problem of delayed discovery, its claims procedures do not preclude application of section 340.1. The Legislature has expressly allowed for delayed accrual of a cause of action for injuries due to childhood sexual abuse in the civil action context in section 340.1, and we must therefore apply it in this similar context of negligence allegations against the District as a public entity.

IV

ANALYSIS: ACCRUAL OF CAUSES OF ACTION

Turning to the language of section 340.1, to determine if Shirk has brought her pleadings within its scope, several steps are required for its interpretation in this unique set of factual circumstances, involving not only a plaintiff of an unusual age for this type of cause of action (over 26, as provided for in subd. (b)(2)), but also a particular type of defendant (a governmental entity employer, as to whom specialized claim requirements would normally apply), as well as a vicarious liability theory. Also, very specialized accrual allegations are made, involving the plaintiff's delayed discovery of causation of adult psychological injuries through the earlier infliction of childhood sexual abuse. Therefore, in this pleading matter, we seek to determine whether the complaint is barred as a matter of law under all the relevant circumstances.

We must read the relevant subdivisions of section 340.1 together. First, under this set of facts, under section 340.1, subdivision (a), "the time for commencement of the action shall be . . . 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 . . . .*" (*Ibid.*) Shirk is alleging she commenced her action and filed her claim a few weeks after the September 2003 psychological exam revealed to her that her adult psychological injury was caused by the earlier sexual abuse.

Because Shirk is more than 26 years of age, she is also required to utilize the provisions of section 340.1, subdivision (b)(2) to authorize her cause of action for vicarious liability, based on allegations the District knew or had reason to know of its

employee's unlawful sexual conduct, but failed to take reasonable steps to prevent it. (§ 340.1, subd. (b)(2), added in 2002, stats. 2002, ch. 149, § 1 ["*This subdivision does not apply* if the person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person . . . ."].)

It must be noted that those specific provisions lifting the bar on a plaintiff over 26 years of age suing for this type of claim did not become effective until January 1, 2003. (Effective date of 2002 non-urgency legislation is the following Jan. 1; Cal. Const., art. IV, § 8, subd. (c)(1).) When subdivisions (a) and (b) are accordingly read together, the result is that as of January 1, 2003, an over-26-year-old plaintiff such as Shirk may make such vicarious liability allegations against an entity, as long as they are made within three years of the discovery/reasonable date of discovery "that [adult] psychological injury or illness was caused by the sexual abuse." (§ 340.1, subd. (a).) Shirk has made such allegations well within the terms of the statute, and we have concluded above that the delayed discovery provisions of section 340.1 may appropriately be applied in the government entity context. Shirk has adequately alleged compliance with claims requirements, because she essentially simultaneously made her claim and filed her complaint, immediately upon receiving the results of her psychological evaluation.

Because of Shirk's age (over 26 when the complaint was filed), an additional inquiry is necessary under section 340.1, subdivision (c): Would her claim "*otherwise be barred as of January 1, 2003, solely because the applicable statute of limitations has or*

had expired," and then be revived under the terms of that subdivision? We conclude yes as to both questions, based on the fact that Shirk did not become authorized as an over 26-year-old person to sue an entity until January 1, 2003, when the amendments to section 340.1, subdivision (b)(2) went into effect. She has alleged the crucial fact that her discovery of the causation of her adult psychological injuries took place in September 2003, when she filed her complaint and claim. As such, her complaint and claim fall within the window period of subdivision (c) and could properly be filed during 2003. (Cf. *Rosenblum v. Safeco Ins., supra,* 126 Cal.App.4th 847, 858 [such a revival provision reopens a filing window for otherwise viable cases that had become time-barred].)

Moreover, we disagree with the District's theory, as clarified at oral argument, that the language of section 340.1, subdivision (c), referring to revival of a claim for damages that would otherwise be barred "solely because the applicable statute of limitations has expired" somehow excludes governmental entities from the scope of coverage of section 340.1. The District's argument appears to be that claims filing periods as to governmental entities are specially provided for by statute and are therefore different from statutes of limitations, so a claim such as Shirk's would "otherwise" be barred by claims requirements, and not "solely" because "the applicable statute of limitations has expired." (§ 340.1, subd. (c).) Instead, there is no indication in the statutory language or the legislative history that governmental tort claims requirements should preclude Shirk from bringing these allegations against the District. It was appropriate for her to bring her governmental claim at essentially the same time as the discovery of the "cause" of her adult psychological injuries, as defined by section 340.1, subdivision (a)(2), due to the

specialized definition of accrual of her causes of action in section 340.1, as read together with the law setting forth claims procedures. Pursuant to Government Code section 901, the time for filing the government claim should be measured by the same rules as the time for filing such a civil action. In 2003, Shirk became enabled to bring this claim under section 340.1, subdivision (b)(2) (as a person over 26 years old). In amending section 340.1, subdivision (c), the Legislature provided for revival of just such lost claims "notwithstanding any other provision of law." The latter language of subdivision (c) can most reasonably be construed as referring to the governmental tort claims requirements.

It is not for this court to make policy decisions of whether section 340.1 represents a wise choice by the Legislature, with respect to negligence actions against public entities brought on a vicarious liability basis. (§ 340.1, subds. (a)(2), (b)(2).) Instead, we seek to read the plain terms of the statute, and its legislative history, together with other relevant statutes, to determine if Shirk's complaint and claim were timely brought and adequately pled. We conclude that this action was timely filed and substantial compliance with the claims statutes has been alleged. The demurrer should not have been sustained without leave to amend, because the Tort Claims Act must be read in conjunction with all the provisions of section 340.1.

DISPOSITION

The judgment of dismissal is reversed with directions to overrule the demurrer. Costs on appeal are awarded to appellant.

CERTIFIED FOR PUBLICATION

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.