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Appeal from Los Angeles Superior Court

Case No. BC 508502

Honorable Mark A. Young, presiding

Thursday, December 8, 2022

Respondent's Brief

OFFICIAL COURT DOCUMENT PROVIDED COURTESY OF MJJR.NET: MICHAEL JACKSON REPOSITORY
WEBSITE AND COMMENTARY IS NOT AFFILIATED WITH THE ESTATE OR FAMILY OF MICHAEL JACKSON

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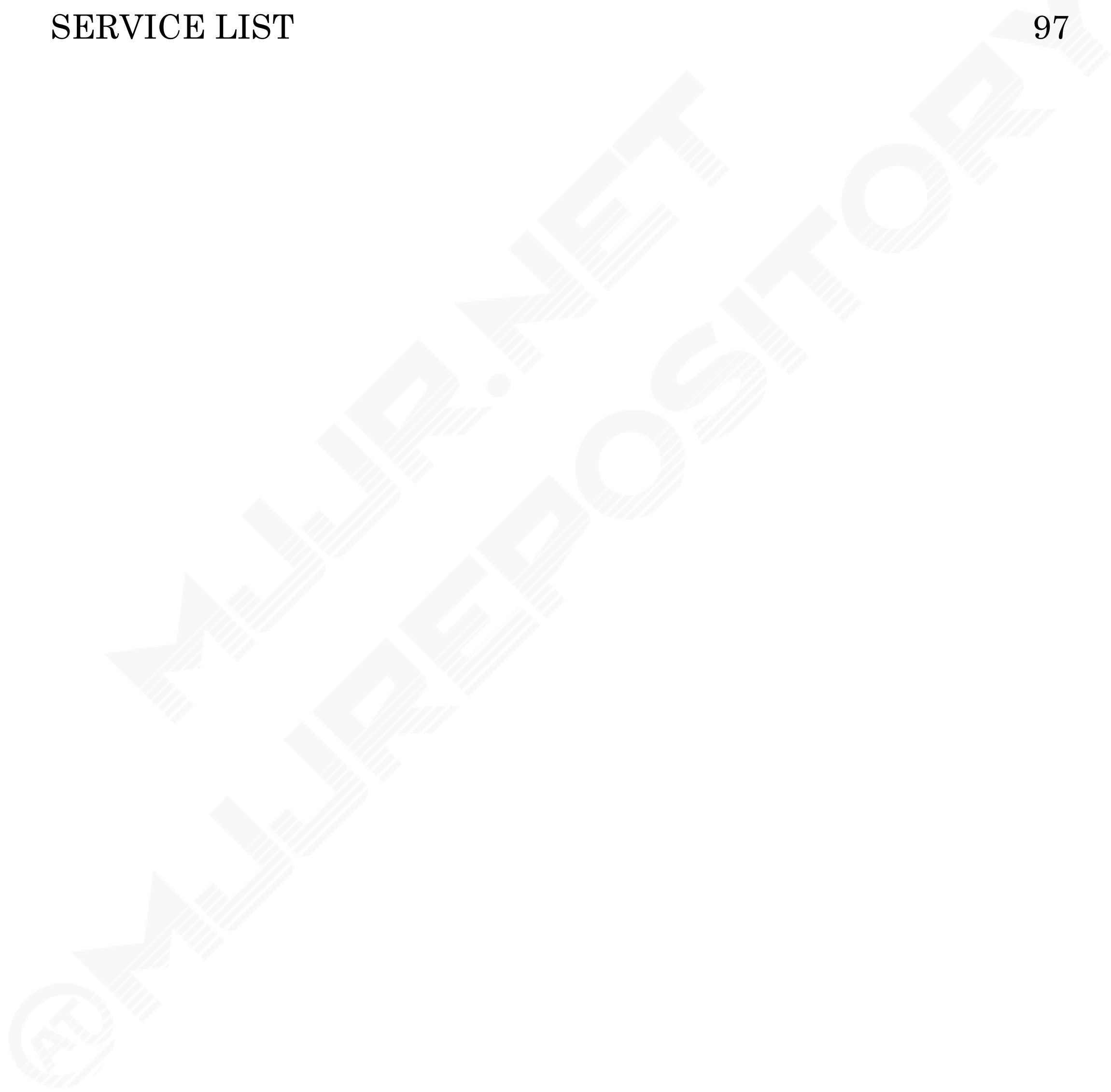

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INTRODUCTION

Plaintiff Wade Robson alleges that Michael Jackson sexually abused him when he was a minor in the 1990s. Robson first tried to sue Jackson's estate for sexual battery and similar torts. After the trial court rejected his claims as time-barred under probate law, Robson sought to hold two of Jackson's solely-owned loan-out companies—Respondents MJJ Productions, Inc. and MJJ Ventures, Inc. ("the Corporations")—liable for failing to prevent the alleged abuse. Because Robson's claims fail on the undisputed facts and law, the trial court correctly granted summary judgment for the Corporations.

Courts have long held that a corporation is not liable for its agents' misconduct unrelated to corporate business. A corporation similarly owes no general duty to protect the world from its agents' misconduct. Such duties exist *only* where the corporation: (a) created or significantly increased the risk of harm; or (b) was able to control its agents' relevant conduct or the victim's welfare such that it would be reasonably expected to provide protection.

The trial court correctly ruled that these principles dispose of Robson's negligence claims. The Corporations had no duty to protect Robson from Jackson, because they had no ability to control Jackson—their sole owner—or his interactions with Robson. Parties cannot be liable for neglecting to exercise powers they simply do not have. Nor would it reasonable to expect companies *Jackson* founded and solely owned, in order to run *Jackson's* businesses, to protect others from *Jackson* himself.

The court also correctly granted summary judgment on Robson's fiduciary duty claim, because Robson presented no evidence that the Corporations were his fiduciaries; and on his intentional infliction of emotional distress claim, because Robson's allegations amount to child procurement, a theory of direct liability for childhood sexual assault. The statute-of-limitations extension for direct liability claims applies only to individuals, not entities.

Other grounds that the Corporations' summary judgment motion raised—but the trial court did not reach—provide additional bases to affirm.

Most broadly, the undisputed evidence establishes that the Corporations were not the legal cause of the alleged abuse, as required for all claims. None of the things that Robson says the Corporations should have done would have made a difference. Robson argues that the Corporations should have reported Jackson to law enforcement or warned Robson's family about him. But doing so would have changed nothing: Robson's mother continued to let Robson be alone with Jackson even after *police and prosecutors* told her that they suspected Jackson of abusing Robson and that some of the Corporations' employees believed the same. Nor would the Corporations' firing, or declining to hire, Jackson have changed anything. The Robsons' relationship with Jackson arose out of Jackson's personal fame. Michael Jackson would have still been Michael Jackson, the world-famous recording artist, without the Corporations. Robson's relationship with Jackson did not arise out of Jackson's relationship with the

Corporations as, say, the relationship between abusive teacher and child arises out of the teacher's relationship with the school.

Robson's challenges to a handful of evidentiary and discovery rulings also fail. He can show neither that the trial court abused its discretion, nor any resulting prejudice.

In the end, the true bar to Robson's attempt to recover against the Corporations is that Jackson is deceased, and Robson failed to file timely probate claims. Were Jackson alive when Robson sued, or had Robson filed a *timely* probate claim, Robson could sue Jackson, or his estate, directly for sexual battery and the like. In such a case, the Corporations—along with all of Jackson's assets—would be available to satisfy any judgment against Jackson or his estate.

This Court should reject Robson's attempt to stretch negligence law and third-party liability theories well past their breaking point solely so he can recover under the idiosyncratic circumstances here. The judgment should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Corporations recognize the seriousness of Robson's allegations. Having thoroughly investigated them, the Corporations remain confident that they are false. This brief nonetheless recites the evidence in the light most favorable to Robson as required by the standard of review. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843-844.) That said, a party opposing summary judgment must rely upon specific evidence, and *not* on unsupported allegations. (*Id.* at p. 849.)

A. Background: Michael Jackson solely owned the Corporations, his ranch, and his apartments at all relevant times.

1. Jackson founded, and owned, the Corporations to furnish his services and hold his interest in a joint venture.

Respondents MJJ Productions and MJJ Ventures are California corporations. (6RAA:3336, 3338; 4UAA:9065.)[1]

Michael Jackson founded MJJ Productions in 1979 as a "loan-out company," furnishing his services as a recording artist. (6RAA:3336; 4UAA:9065.) MJJ Productions entered into contracts with Jackson's record label; owns the copyrights in the recordings on Jackson's albums; and collects royalties on exploitation of those recordings. (6RAA:3337; 4UAA:9084.)

Jackson founded MJJ Ventures as another "loan-out company" in 1991 to perform his services for a joint venture with Sony Music. (6RAA:3338; 4UAA:9088.)

Jackson was both Corporations' sole shareholder during his lifetime. (6RAA:3336, 3338; 4UAA:9065-9066.)

The Corporations' bylaws state that the boards manage the Corporations' affairs. (6RAA:3355, 3404.) For most years relevant here, Jackson was also the sole member of both Corporations' boards. (6RAA:3336, 3338; 4UAA:9084, 9089.) In mid-1994, Jackson increased the Corporations' boards from one director to

[1] Appendix cites are in the format [vol.]AA:[page]. RAA cites are to the redacted volumes of the appendix, and UAA cites are to the unredacted volumes.

four. (6RAA:3336, 3338; 4UAA:9085, 9089.) He appointed himself with his lawyer, talent manager, and business manager as the directors. (*Ibid.*) Jackson nonetheless retained full control of both boards. As sole shareholder, he could remove any board member at any time, for any reason, without notice, as a matter of law. (Corp. Code, §§ 303, 603; 6RAA:3352, 3403.)

2. Jackson solely owned and controlled his homes.

Just as Jackson solely owned the Corporations, he also solely owned his homes—specifically, Neverland Valley Ranch ("the Ranch") and several apartments. (6RAA:3339-3340; 4UAA:9066-9067.) The Corporations never owned any interest in the Ranch or Jackson's apartments. Jackson held title to them in his own name during all relevant times. (*Ibid.*)

The Corporations employed some of Jackson's personal and security staff at the Ranch; paid for some guests' transportation and shopping trips; and cooked for and cleaned up after Jackson's guests. (7RAA:4483-4484, 4530-4534, 4634-4635, 4646-4647, 4697, 4700-4701.) But Jackson ultimately controlled his own homes. (6RAA:3339-3340, 3569-3571, 3576-3578; 4UAA:9068.)

Robson himself described the Ranch as "2,700 acres of impenetrable Michael Jackson country governed by one man only, Michael Jackson." (6RAA:3696; 4UAA:9093.) Robson described the Ranch as an example of Jackson "liv[ing] in a world of his own creation, governed by his own rules. A world that HE could control." (6RAA:3701; 4UAA:9094.)

Similarly, Robson's mother Joy ("Mrs. Robson") testified that Jackson so controlled the Ranch that he told people who they could and could not talk to there. Jackson "didn't want us talking to the staff [at the Ranch], and he didn't allow the staff to talk to us." (6RAA:3465; 4UAA:9095.) According to Mrs. Robson, "if you did anything to upset Michael, he would cut you off. … So in order to remain his friend, you had to abide by his rules." (6RAA:3488; 4UAA:9096.)

Consistent with the Robsons' testimony, and common sense, the undisputed evidence is that the Corporations had no ability to: (a) control when Jackson could come to and leave his homes and with whom; (b) dictate who could and could not visit Jackson at his homes; or (c) create any sort of "procedures" against Jackson's wishes for when Jackson arrived and left his homes, and who could visit him. (4UAA:9068[2]; 6RAA:3339-3340, 3569-3570, 3577-3578.)

The opening brief focuses heavily on Jackson's personal assistant Norma Staikos (who left the Corporations in 1993, 7RAA:4503) supposedly controlling security issues at the Ranch. (AOB 15-16.) But there is no evidence that Staikos, or anyone else, had authority to tell *Jackson* what to do, or to impose restrictions on him anywhere, particularly in *Jackson's* homes. Robson points to conclusory testimony from one former employee

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[2] Robson purported to "dispute" these facts, and that Jackson controlled his own homes. But he cited only portions of corporate bylaws that say nothing about Jackson's personal homes. (4UAA:9068.)

that she believed she was to follow Staikos' instructions even if they conflicted with Jackson's. (AOB 15; but see 4RAA:2077-2078 [prior judge finding leading objection to this testimony "well-taken"].) But there is *no evidence* of that ever happening. The only evidence is to the contrary: Another employee testified that after Staikos fired him without Jackson's knowledge, Jackson overruled Staikos and reinstated him. (8RAA:5554-5555.)

B. 1990-1997: The Robson family befriends Jackson; Robson now contends that Jackson molested him during that time.

1. The Robson family seeks out a relationship with Jackson personally.

Robson was born in 1982 in Australia. (4UAA:9064.) When he was two, his mother showed him *The Making of Thriller*. (4UAA:9069.) Robson "was instantly fascinated with the music video and watched it every day." (*Ibid.*) Robson's fascination with Jackson "grew into an obsession. Michael Jackson became like an entertainment 'God' to [Robson]." (*Ibid.*)

In 1987, his mother entered a five-year-old Robson into a dance contest sponsored by Target, Pepsi, and CBS Records. He won. (6RAA:3437-3438; 4UAA:9069.) As the prize, he and his mother met Jackson before a local concert. (6RAA:3439-3440; 4UAA:9070.) He danced with Jackson at a concert the next night. (6RAA:3442; 4UAA:9070.) The night after, he and his mother went to deliver a "thank you" note and ended up visiting Jackson at his hotel. (6RAA:3442; 4UAA:9070.) There is no evidence that the Corporations had anything to do with the contest or with

Robson and his mother meeting Jackson afterward. The Corporations did not furnish Jackson's services on concert tours, fund or operate his tours, or otherwise have anything to do with his tours. (6RAA:3337, 3339.)

Over the next two-and-a-half years, Robson's mother sent Jackson letters and videos. Jackson never responded. (6RAA:3444-3445; 4UAA:9071.)

Then, in 1990, the Robsons visited California on a family vacation. (6RAA:3445-3447; 4UAA:9071.) Robson's mother sought to reconnect with Jackson during the trip. (6RAA:3445-3447; 4UAA:9072.) She eventually found a phone number for Staikos, who was employed by MJJ Productions. (*Ibid.*) Through Staikos, Jackson invited the Robsons to visit him at Record One recording studio. (6RAA:3448; 4UAA:9072.) There is no evidence, and Robson never claimed, that the studio was owned or controlled by the Corporations (it was not).

After spending time with the family at Record One, Jackson personally invited them to spend the weekend at the Ranch. They agreed. (6RAA:3450, 3452; 4UAA:9072.)

Robson and his mother visited Jackson in California twice more over the next year-and-a-half. (4UAA:9073.) In May 1990, at Jackson's request, the shoe company L.A. Gear (not the Corporations) paid for their travel to participate in an L.A. Gear photo shoot with Jackson. (6RAA:3458-3460; 4UAA:9073.) Robson and his mother returned for a week in February 1991 at Jackson's invitation to meet a choreographer. (6RAA:3471-3472; 4UAA:9073.) Between visits, Jackson called Robson and his

mother, faxed notes to them, and directed his personal assistants, employed by MJJ Productions, to send small gifts to Robson's family (magazines, a cassette, and clothes). (8RAA:6702, 6720; 9RAA:6870-6871, 7102, 7110.)

2. The Robsons move to the United States to pursue Robson's entertainment career.

In September 1991, Robson, his mother, and his sister moved to the United States permanently and applied for work visas. (4UAA:9074; 6UAA:9607.) At the time, Robson was booked to work on a Jackson music video in California. (6RAA:3475.)

Mrs. Robson began considering the move almost a year earlier, to pursue Robson's career in entertainment. (6RAA:3468.) She asked Jackson to sponsor their immigration. He agreed and, according to Mrs. Robson, "instructed his office to do whatever was needed." (4UAA: 9075[3]; 6RAA:3489-3490; 4UAA:9075.) The visa application explained that MJJ Ventures had offered temporary employment to Robson, a dancer and performing artist. (6UAA:9632-9633.) Robson's H-1B visa application—for individuals of "Distinguished Merit and Ability" (6UAA:9651)—explained that he was "internationally recognized as the leading Australian dancer and live performing artist of his generation." (6UAA:9607, 9651-9683 [providing extensive supporting evidence].)

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[3] Robson characterized as "disputed" that Mrs. Robson asked Jackson to sponsor the family's immigration, but Mrs. Robson's testimony was clear on the issue. (6RAA: 3489-3490; 7RAA:4017.) Robson offered no further evidence on the matter.

After moving to the United States, Mrs. Robson soon realized that she could not rely on Jackson to further Robson's career. (6RAA:3477-3479.) She had to take the reins in advancing Robson's career, because his work with Jackson was limited and did not pay the bills. Jackson also did not understand the challenges of starting a career from scratch. (6RAA:3477-3479, 3482-3485; 4UAA:9074.) In her words, "being around Michael had never been about furthering [Robson's] career for me after we arrived in the States." (6RAA:3581; 4UAA:9076.) And indeed, Mrs. Robson would have remained friends with Jackson regardless of whether he sponsored her family's immigration. (6RAA:3498; 4UAA:9076.)

Reflecting Mrs. Robson's testimony that Jackson was little help furthering Robson's career, Robson's work with the Corporations was limited to: (1) three music videos for Jackson; and (2) as part of a rap duo, releasing one album on MJJ Ventures and Sony's joint record label, "MJJ Records." (4UAA:9096-9097.)[4] The opening brief also asserts that Robson acted in a Pepsi commercial "for Defendants." (AOB 20.) But the evidence cited by Robson does not say *who* employed Robson in the commercial. (*Ibid.*) It was not the Corporations—Pepsi, or the production company Pepsi engaged, presumably employed Robson. (7RAA:4309-4310.)

[4] In the latter case, Robson's contract was with third-party managers for the rap group who then contracted with MJJ Records. (6RAA:3735-3736.)

3. Robson's mother lets Robson be alone with Jackson, even after police and others tell her that they believe Jackson molested Robson.

Robson now contends that Jackson molested him during his first 1990 visit to the Ranch, and that the molestation continued until 1997 at locations including the Ranch, Jackson's apartments, the Robsons' home, the Record One studio, at the Pepsi commercial, and at hotels where Jackson, Robson, and Mrs. Robson stayed. (8RAA:6538, 6544-6546, 6576-6579.)

A few employees at the Ranch and at Jackson's other homes have testified that they saw circumstances suggesting abuse, and that it was rumored that Jackson liked boys. (E.g., 7RAA:4739-4741, 4745-4750, 4755-4756, 4840-4844, 4922-4925, 5113-5114; 8RAA:5312-5313, 5318-5320.)[5] Among other things, one employee claimed that Staikos fired her for "spying," which she believed referred to her allegedly seeing Jackson grab

[5] As required by the summary judgment standard, this brief credits these employees' accounts. That said, *every* former employee whose testimony Robson cites as being suspicious was paid at least $20,000 by tabloid television shows to tell these stories. (7RAA:3881, 3888, 3910-3911, 3919, 3939.) As one of Robson's witnesses testified, these tabloids encouraged them "to ['lie or to make stories up'] . . . they pretty much said we could pretty much say anything." (7RAA:3891.)

Robson's crotch as they practiced a dance routine. (7RAA:4784-4786, 4840-4843.)[6]

Mrs. Robson was aware of many of these employee allegations around the time they surfaced in connection with the criminal allegations against Jackson in late-1993. (6RAA:3434-3436, 3515-3518; 7AA:3791; 4UAA:9080.) In fact, Mrs. Robson was aware of claims that Jackson molested her son well before that: A reporter told her in July 1992 that he suspected Jackson molested her son. (9RAA:6917-6920.) When allegations were publicized in 1993 that Jackson molested another boy, police came to the Robsons' home twice to discuss the allegations, including claims that Robson had been abused. (6RAA:3501-3504; 4UAA:9078.) Mrs. Robson was also deposed in a civil case involving allegations of abuse, and testified before a grand jury where prosecutors repeatedly told her that they believed Jackson had molested her son. (6RAA:3524-3532; 4UAA:9078-9080.) Throughout this all, Mrs. Robson believed that Jackson was innocent. (6RAA:3509-3510; 4UAA:9077.)

Despite repeatedly being told about suspicions of abuse from 1992 forward, Mrs. Robson continued to permit Robson to spend time with Jackson alone, knowing that they sometimes

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[6] The employee also noted that Staikos "loosened" security policies around Jackson at his residences. (7RAA:4860.) Robson's opening brief infers this was related to the employee seeing Jackson arriving at the Ranch with young boys (AOB 24), but that assertion is inconsistent with the evidence. The witness connected the supposed security "loosening" to a "power struggle" between Staikos and another employee. (7RAA:4857-4861.)

slept in the same room and even the same bed. (4UAA:9081; 9RAA:6858-6859, 7068.) She had no concerns because she "just automatically trusted [Jackson]. He was just one of those people … [T]here was never anything that gave me concern at the time." (6RAA:3454-3455, 3457-3458; 4UAA:9077.)

Mrs. Robson did not mention the Corporations when explaining why she trusted Jackson to spend time alone with her son. She knew almost nothing about them, only that they were Jackson's companies: "some of the things that Michael did went through Ventures, and some went through Productions. I'm not sure how they separated that." (6RAA:3493-3494; 4UAA:9082.)

C. 2005: Robson testifies that he never had any sexual contact with Jackson.

In 2005, Jackson was tried (and acquitted) on charges of sexually abusing a minor. (1RAA:62-63.) A then-22-year-old Robson testified at trial that he never had any sexual contact with Jackson. (6RAA:3583-3584, 3590-3591, 3593, 3605, 3609, 3622, 3625, 3636.) Robson did not waver despite the prosecution's aggressive cross-examination about all aspects of Robson's relationship with Jackson. (6RAA:3597, 3605-3606, 3609-3625, 3637-3643, 3646-3656, 3660-3662.)

Robson now claims that his trial testimony in 2005 was false in just about every detail. (7RAA:3836-3846.) He explains that he did not tell the truth because, in 2005, he "did not believe or understand that he had been sexually abused." (1RAA:62-63.)

D. Jackson dies in 2009. Four years later, Robson files a claim against Jackson's estate alleging that Jackson sexually abused him; the probate court finds the claim time-barred.

Jackson died on June 25, 2009. (1RAA:63.) Nearly four years later, Robson petitioned the probate court in 2013 for leave to file a late creditor's claim against Jackson's estate, claiming Jackson had abused him decades earlier. (6RAA:3672.) The petition was necessary because a properly filed creditor's claim is a prerequisite to suing a decedent via his estate, (*Dobler v. Arluk Medical Center Industrial Group, Inc.* (2001) 89 Cal.App.4th 530, 536), and Robson had missed the deadline by several years (Prob. Code, § 9100). He had also missed Code of Civil Procedure section 366.2's one-year cut-off for all suits against a decedent's estate based on the decedent's personal liability.

The probate court granted summary judgment on the petition in 2015, barring Robson from pursuing claims against Jackson's estate. (6RAA:3667.) Robson never appealed that order. (4RAA:2067-2068.)

E. 2016: Robson files the operative complaint against the Corporations, seeking to hold them liable for failing to prevent the alleged abuse.

After the court dismissed the claims against the Estate, Robson focused on the Corporations. The operative complaint alleges six causes of action: (1) intentional infliction of emotional distress; (2) negligence; (3) negligent supervision; (4) negligent retention/hiring; (5) negligent failure to warn, train, or educate;

and (6) breach of fiduciary duty. (1RAA:48.) All claims are based on Robson's allegations that Jackson sexually abused him between 1990-1997, and that some of the Corporations' employees knew or had reason to know of abuse but failed to prevent it. (1RAA:50-51.)

Robson's operative complaint alleges that Jackson was both Corporations' "president/owner," and that the Corporations were his "alter egos." (1RAA:49-51.)

F. The trial court grants summary judgment on statute of limitations grounds; this Court reverses after the Legislature extends the limitations period.

In 2017, the trial court granted summary judgment against Robson based on the then-applicable statute of limitations. (4RAA:2078.) He appealed. After the appeal was briefed, the statute of limitations was retroactively extended. (Code Civ. Proc., § 340.1 as amended by Stats. 2019, ch. 861, § 1, eff. Jan. 1, 2020.) The Corporations agreed that the rationale for summary judgment no longer applied, and this Court reversed. (*Safechuck v. MJJ Productions, Inc.* (2020) 43 Cal.App.5th 1094, 1100.)

G. The trial court grants non-party motions for protective orders, denies Robson's motion to reopen a deposition, and sanctions Robson's counsel.

Following reversal of the statute-of-limitations judgment, the trial court granted several non-parties' motions for protective orders concerning Robson's attempts to depose them regarding

alleged childhood sexual abuse of them or their family members. The trial court found that the non-parties had identified legally protectable privacy interests and that Robson had not met his burden to show his need for discovery outweighed those interests. (4RAA:2098-2105.)

The trial court also denied Robson's motion to reopen the deposition of another non-party, Leroy "Yoshi" Whaley. (4RAA:2093-2097.) The court found that Robson's counsel terminated Whaley's deposition without justification; without attempting to meet and confer; without preserving the right to renew it pending a motion; and without meeting and conferring *in good faith* before moving for the renewed deposition. (4RAA:2093-2097.) The court imposed monetary sanctions against Robson's counsel for failing to meet and confer in good faith and for filing a motion without substantial justification. (4RAA:2097.) The matter is discussed in more detail below at pages 89-93: As explained there, Robson's brief does not fairly represent the trial court's ruling or its factual basis.

H. The trial court again grants summary judgment for the Corporations.

Following resolution of these issues, the Corporations again moved for summary judgment on multiple grounds. First, the Corporations argued that the undisputed facts established that Robson could not prove that the Corporations were the legal cause of the alleged abuse, as required for all causes of action. (6RAA:3267, 3281-3286.) Alternatively, the Corporations argued

that each claim failed for several reasons. (6RAA:3267-3269, 3286-3293.)

The trial court granted summary judgment without reaching the causation issue. (9RAA:7247.) It held:

- Robson's negligence causes of action fail because his evidence does not permit a finding that the Corporations had a duty towards him. (9RAA:7249-7250.)

- The intentional infliction of emotional distress claim failed because Robson is attempting to hold the Corporations liable for child procurement, a theory of direct liability for childhood sexual assault. The statute-of-limitations extension for direct liability claims, however, applies only to individuals, not entities. (9RAA:7250-7251.)

- The breach of fiduciary duty claim failed because Robson's evidence cannot support a finding that the Corporations were his fiduciaries. (9RAA:7251-7252.)

STANDARD OF REVIEW

This Court reviews summary judgment de novo. (*Aguilar*, *supra*, 25 Cal.4th at p. 843.) It must affirm if there is no triable issue of material fact, and the Corporations are entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

The Court reviews the trial court's result, not its reasoning; it must affirm on any ground supported by the record, regardless of the ground upon which the trial court relied. (*Becerra v. County of Santa Cruz* (1989) 68 Cal.App.4th 1450, 1457.)

Discovery orders are reviewed for an abuse of discretion. (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1123.)

On all issues, Robson has the burden as appellant to affirmatively show prejudicial error. (*Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 230.)

ARGUMENT

I. Robson's claims must be based on distinct acts or omissions by the Corporations; they cannot be directly liable for alleged abuse.

A corporation can only act through its agents and employees. (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 77.) But "the employee and the corporation are different 'persons,' even where the employee is the corporation's sole owner." (*Cedric Kushner Promotions, Ltd. v. King* (2001) 533 U.S. 158, 163.) "After all, incorporation's basic purpose is to create a distinct legal entity, with legal rights, obligations, powers, and privileges different from those of the natural individuals who created it, who own it, or whom it employs." (*Ibid.*)[7]

Corporations are vicariously liable for the torts of employees committed within the course or scope of their employment. But Robson does not claim that any of Jackson's alleged crimes were performed in the course or scope of Jackson's employment by the Corporations. Nor could he—it is well-settled

[7] Importantly, Robson's case depends on these bedrock principles. That the Corporations and Jackson are legally separate "persons" is what allows Robson to sue the Corporations for their allegedly "independent" liability, despite missing the deadline for suing Jackson's Estate. (See p. 30, *ante*.)

that "sexual misconduct falls outside the course and scope of employment and should not be imputed to the employer." (*Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 394, disapproved on other grounds by *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 222, fn. 9 (*Brown II*).)

Recognizing this limitation, Robson does not argue that the Corporations are directly liable for the alleged abuse itself. Instead, he contends that the Corporations had a legal duty to protect him from Jackson's alleged criminal conduct, or that their otherwise tortious conduct was a legal cause of sexual abuse.

II. All of Robson's negligence claims fail.

Robson alleged four negligence claims: general negligence; negligent supervision; negligent retention/hiring; and negligent failure to warn, train, or educate. As the trial court held, the Corporations are entitled to summary judgment on all four claims because they had no duty to protect Robson from Jackson. The supervision/retention/hiring and failure to warn, train, or educate claims also fail for independent reasons that were briefed but that the court did not reach.

A. Robson cannot establish the prerequisite for his negligence claims: that the Corporations owed a duty to protect him from Jackson.

"Whether a duty exists is a question of law to be resolved by the court." (*Brown II*, *supra*, 11 Cal.5th at p. 213.) "[A]s a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct." (*Conti v.*

Watchtower Bible & Tract Society of New York, Inc. (2015) 235 Cal.App.4th 1214, 1226.)

A duty to protect a plaintiff from injuries caused by a third party exists *only* where there is "a special relationship between the parties or some other set of circumstances giving rise to an affirmative duty to protect." (*Brown II*, *supra*, 11 Cal.5th at p. 209.) Even then, there may be no duty: If such a relationship or circumstances exist, the court also must consider whether the factors outlined in *Rowland v. Christian* (1968) 69 Cal.2d 108 "counsel limiting that duty." (*Brown II*, at p. 209.)

The trial court concluded that there was neither a special relationship between the parties here, nor other circumstances imposing an affirmative duty on the Corporations to protect Robson from Jackson. (9RAA:7234-7236.) Those findings were correct and compel summary judgment on all negligence claims.

1. The Corporations did not have a special relationship *with Jackson* that would create a duty to protect Robson from him.

Courts uniformly find that a duty does not arise from a relationship between defendant and the alleged tortfeasor unless the defendant can control the alleged tortfeasor. "A basic requisite of a duty based on a special relationship is the defendant's ability to control the other person's conduct." (*K.G. v. S.B.* (2020) 46 Cal.App.5th 625, 631.)[8] That is the case here: The

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[8] See also *Barenborg v. Sigma Alpha Epsilon Fraternity* (2019) 33 Cal.App.5th 70, 79 [no duty where national fraternities

Corporations had no special relationship with Jackson because they had no ability to control his conduct.

a. Jackson's sole ownership of the Corporations means they had no ability to control him.

A corporation is controlled by its board. (Corp. Code, § 300.) The board is controlled by the corporation's shareholders. (*Id.*, § 603 [board elected with "consent of all shares"].)

Jackson was the Corporations' founder and sole shareholder. (6RAA:3336, 3338; 4UAA:9065-9066.) He therefore had complete control over the Corporations. That control included authority to hire or fire board members at any time, without notice or cause, and to control the Corporations' officers, through control of the board. (Corp. Code, §§ 303, subd. (a), 312, subd. (b).)

Robson emphasizes that Jackson expanded the Corporations' boards from one to four directors in June 1994. (AOB 44-45.) That expansion, more than four years after Jackson allegedly began molesting Robson (4UAA:9072-9073, 9085, 9089), does not change the analysis. Robson contends that the expanded boards "had the required vote to remove Jackson." (AOB 45.) But as the trial court found, the expansion of the board does not raise a triable issue of material fact. (9RAA:7234.) Jackson still owned

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have no ability to monitor local members]; *Todd v. Dow* (1993) 19 Cal.App.4th 253, 256, 259 [no duty where parents had no ability to control adult son who took gun from parents' home and shot someone]; *Wise v. Superior Court* (1990) 222 Cal.App.3d 1008, 1012, 1014 [no duty where wife had no ability to control husband, a "human time bomb"].

all the Corporations' stock after the boards expanded. (4UAA:9065-9066.) As discussed above, that 100% ownership meant that Jackson retained ultimate control over the board. He could remove any or all board members at any time, without notice, and without cause. (Corp. Code, §§ 303, subd. (a), 603, subd. (a).) As the trial court found, any attempts to discipline Jackson "would be futile because [the Corporations] had no legal ability to control Jackson." (9RAA:7234.)[9] Because no rational trier of fact could find otherwise, there is no triable issue on control. (*Aguilar*, *supra*, 25 Cal.4th at p. 845.)

b. Jackson's status as an "employee" cannot establish a special relationship, absent an ability to control him.

Robson's assertion that Jackson was the Corporations' "employee" (AOB 43-44) changes nothing. The label "employee" does not automatically create a special relationship. Rather, it is the employer's *ability to control* an employee that may give rise to a special relationship in the employment context. (See, e.g., *Brown II*, *supra*, 11 Cal.5th at p. 216.) Ability to control exists in a run-of-the-mill employment relationship, but did not exist here for reasons discussed above.

The Restatement section Robson relies upon (AOB 40-41) does not help him. That section confirms that special

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[9] Robson also has no evidence that these other board members were on notice of alleged abuse.

relationships are premised on an *ability to control* the person posing risks. (Rest. 3d Torts, Liability for Physical and Emotional Harm (2012) § 41, com. (c) [listed special relationships with the person posing risk "are ones in which the actor has some degree of control over the other person"].)

The Restatement further makes clear that even where there is some ability to control, "[w]hen the employment relationship does not increase the risk of the employee harming another, the employer is not subject to liability." (*Id.* § 41, Reporter's Note, com. (e).) Here, Jackson's nominal employment with the Corporations did not increase the risk of harm.

The evidence does not remotely support Robson's argument that he was "exposed to Jackson by reason of his employment." (AOB 43.) Robson was exposed to Jackson because of Jackson's fame and talent. Robson and his family pursued and developed a personal relationship with Jackson because of that fame and talent—not because of Jackson's relationship with the Corporations, about whom they knew almost nothing. (8RAA:6759; 9RAA:6797, 6801-6802, 6896-6897, 6901-6902; 4UAA:9069-9075.) Michael Jackson would still be Michael Jackson with or without the Corporations. His ability to write music, sing, dance, etc.,was not created by the Corporations. His talents—and the fame created thereby—preexisted the Corporations and are what caused the Robsons to pursue a friendship with Jackson.

Moreover, an employer has no duty to protect others from criminal conduct outside the scope of employment and unrelated

to job functions. *Federico v. Superior Court* (1997) 59 Cal.App.4th 1207, is illustrative. There, the court assumed that it was foreseeable that an employee-hairstylist with known pedophilia convictions might molest minors he met on the job, but still held that there was no duty to protect: An "employer is not charged with guaranteeing the safety of anyone his employee might incidentally meet while on the job against injuries inflicted independent of the performance of work-related functions." (*Id.* at p. 1215.) Same here. The alleged molestation was unrelated to any conceivable employment Jackson had and to any job functions, and occurred in places that the Corporations had no interest or control.

Robson argues that the fact that other employees could have been fired for defying Jackson demonstrates some measure of control over Jackson. (AOB 44.) That is akin to arguing that a supervisor has no control over a subordinate employee because the subordinate could quit or defy orders. That an individual employee could hypothetically refuse Jackson's request to provide secretarial, security, or transportation services—only to be immediately fired—does not mean that the Corporations could *control* Jackson. Jackson could perform the requested tasks himself, or hire someone else to do them *with or without* the Corporations' involvement.

Kowalski v. Shell Oil Co. (1979) 23 Cal.3d 168, is not to the contrary. Robson cites it for the proposition that actual control is not dispositive of duty. (AOB 44.) But *Kowalski* says nothing about "special relationships" or negligence-based duties at all. It

addressed an entirely different issue: whether plaintiff was in an employment relationship with defendant such that workers' compensation remedies precluded a negligence suit altogether. (*Kowalski*, *supra*, 23 Cal.3d at p. 175.) That is no issue here.

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The Corporations' showing, and the trial court's finding, remains unrefuted: The Corporations had no ability to control Jackson and, therefore, no special relationship with him giving rise to a duty to protect Robson from him.

2. The Corporations did not have a special relationship *with Robson* that would create a duty to protect him from Jackson.

As an alternative source of duty, Robson argues that the Corporations' relationship *with him* gave rise to a duty to protect him from Jackson. (AOB 37-43.) He is wrong. The Corporations had no such duty, because they had no ability to provide such protection, nor would it be reasonable for Robson or his parents to expect protection.

The necessary dependence and control are lacking. Robson argues that the Corporations' lack of control over *Jackson* is not dispositive of whether they had a special relationship with *Robson*. (E.g., AOB 41-43.) But the Supreme Court has confirmed that a special relationship between the defendant and the alleged victim also requires control—namely, a relationship may give rise to a duty where the victim has a right to expect protection because the defendant "has *superior control over the means of protection*." (*Regents of University of California v. Superior Court*

(2018) 4 Cal.5th 607, 619-621 (*Regents*), italics added; see also *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1101-1103 (*Brown I*), *aff'd* by *Brown II, supra*, 11 Cal.5th 204 [portion of opinion undisturbed on review; rejecting claim that plaintiffs had special relationship with U.S. Olympic Committee creating duty to protect them from their coach; allegations did not establish that Committee "had the ability to control [the coach's] conduct or was in the best position to do so"].)

Even where special relationships exist, they "have defined boundaries" based on the limits of the defendant's sphere of control. (*Regents*, *supra*, 4 Cal.5th at p. 621.) For example, the Supreme Court has explained that colleges have a special relationship with their students "*only* in the context of school-sponsored activities over which the college has some measure of control"; there is no duty to protect students off campus or in "social activities unrelated to school," because those are "beyond the institution's control." (*Id.* at p. 626, italics added.) Similarly, another division of this Court recently held that Uber had no special relationship with passengers waiting for drivers that would impose a duty to protect the passengers: Uber "had no control over the [passengers'] movements, nor over the environment in which the [passengers] were waiting." (*Doe No. 1 v. Uber Technologies, Inc.* (2022) 79 Cal.App.5th 410, 421-422 (*Uber*).) Here, Jackson's complete control over the Corporations (§ II.A.1.a., *ante*) means they had no ability to protect Robson from him, particularly from conduct that allegedly took place in private residences and other non-corporate settings.

Robson and his family likewise had no basis to rely on the Corporations—entities established *by Jackson* to conduct *Jackson's* business—for protection *from Jackson*. And the undisputed evidence shows that the Robsons did not, *in fact*, rely on the Corporations to protect Robson from Jackson: Mrs. Robson knew little about the Corporations—only that they were *Jackson's companies*: "some of the things that Michael did went through Ventures, and some went through Productions." (4UAA:9082; 9RAA:6896-6897; see also 4UAA:9077, 9094; 9RAA:6900-6902 [Mrs. Robson "just automatically trusted" Jackson; Robson viewed Jackson as living in a world "HE could control"].)

Robson's assertion that the Corporations arranged for him to join Jackson at his house (AOB 37) in no way changes this analysis. The evidence Robson cites for this shows, *at best*, that the Corporations' employees made arrangements at Jackson's requests.[10] Handling such logistics does not mean that the Corporations had control over Jackson, or effective means to protect Robson from Jackson.

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[10] The two pieces of evidence cited are: (1) Mrs. Robson's testimony that Staikos did things that "a secretary or personal assistant" does; and "she did everything *for him* [Jackson]" (8RAA:6500-6501); and (2) Robson's own testimony that employees who "worked for Michael" organized meetings between Jackson and Robson, and speculation that Jackson could not do these things himself because Jackson was "like a child" (8RAA:6644-6653.) Most of the testimony, however, is Robson's speculation about why employees may have known about abuse.

Equally unavailing is Robson's argument that two cases the trial court cited for its no-duty ruling are inapposite. (AOB 41-42, discussing *Todd*, *supra*, 19 Cal.App.4th 253 and *Coit Drapery Cleaners Inc. v. Sequoia Ins. Co.* (1993) 14 Cal.App.4th 1595.) The bedrock principles the trial court relied upon are supported by ample case law, discussed above, and establish that a defendant and victim have a special relationship only where the defendant has control over the means of protection, such that the victim had a right to expect such protection. (E.g., *Regents*, *supra*, 4 Cal.5th at pp. 619-621.) Those circumstances do not exist here.

Robson's limited "employment" did not create a wide-reaching special relationship. Robson argues that the Corporations had a duty to protect him because they employed him as a minor. (AOB 37.) But like a college-student relationship, an employer-employee relationship does not create an *unbounded* duty to protect the employee under all circumstances. An employer's "duty to protect his employees is limited to while they are 'at work' or otherwise in a locale the employer controls." (*Musgrove v. Silver* (2022) 82 Cal.App.5th 694, 712.)

The undisputed evidence here is that Robson's "employment" consisted only of appearances in three music videos for Jackson, and Robson being signed indirectly to a record label partly owned by MJJ Ventures. (9RAA:6877-6880, 6884-6885; 4UAA:9096-9097; see also p. 26, *ante*.) Robson does not claim that Jackson abused him while filming those videos or recording Robson's group's album. (8RAA:6544-6546.) Rather, Robson alleges that the abuse occurred at Jackson's residences

and hotels, at Robson's own residence, at a Pepsi commercial, and at a non-party recording studio. (4UAA:9073; 9RAA:7235.) Robson submitted *no evidence* that any of this related to his limited employment. There is no such evidence. Those interactions were outside the scope of Robson's narrow employment, at locations where the Corporations had no control. Any employment-based duties to Robson, thus, did not extend to this situation.

The recent decision in *Colonial Van & Storage, Inc. v. Superior Court* (2022) 76 Cal.App.5th 487 is illustrative. There, plaintiff was shot by her co-employee's son, while engaging in a work-related activity at the co-employee's private residence. (*Id.* at pp. 492-494.) The Court held that the employer had no duty to protect the plaintiff because the shooting occurred "at a private residence that [the employer] did not control" and because the plaintiff "could not reasonably expect any protection afforded by its special relationship with [the employer] to reach into the setting of a private residence." (*Id.* at p. 501.)

Likewise, the alleged criminal conduct here was at private residences and other places where the Corporations had no control. The Corporations could not tell Jackson who could visit him or restrict how visits occurred. (6RAA:3339-3340; 8RAA:5415, 5419; 4UAA:9068.) As the trial court found, Robson failed to submit *any* contrary evidence. (9RAA:7235.) Testimony that Staikos implemented rules regarding minor children and "loosened" security around Jackson at his residences (see AOB 15-16, 24-25) does not counter that finding. That evidence does

not show that Staikos could control what *Jackson* did, against his wishes, or protect Robson from Jackson. (See § II.A.1., *ante.*) If an employee at *Jackson's home* refused to listen to him, he could fire her on the spot and have her removed as a trespasser.

Robson being a minor makes no difference. Contrary to Robson's description (AOB 37), *Brockett v. Kitchen Boyd Motor Co.* (1968) 264 Cal.App.2d 69, does *not* establish that employers have a heightened special relationship with minor employees. In *Brockett*, the employer got its minor employee drunk at a company party, put him in a car, and told him to drive home. (*Id.* at p. 70.) On these facts, the court found that the employer "had control of the situation," had "assumed the responsibility for the well-being and proper conduct of the minor," and had a duty to "exercise ordinary care" to protect the general public. (*Id.* at pp. 72-74.) *Brockett* did not purport to adopt a rule imposing broader duties on employers to minor employees.[11]

Cases involving schools, churches, and youth organizations are inapposite. Robson argues that the Corporations owed him a duty because he was under their "supervision, care, and control," and because his parents allegedly entrusted him to the Corporations' care based on the allegedly "implicit representation that Jackson was a safe and upstanding mentor." (AOB 37-39.) Robson is attempting to

[11] Although *Brockett* references a "special relationship," it is more properly understood as a misfeasance case under the modern approach laid out in *Brown II.* (See § II.A.3., *post.*)

transform the Corporations into childcare organizations, akin to churches, schools, or the Boy Scouts. His effort is unavailing.

The evidence does not support Robson's allegation that the Corporations were youth organizations. MJJ Productions furnished Jackson's services as a recording artist; MJJ Ventures held Jackson's interest in a joint venture. (4UAA:9084, 9088.) Although Robson disputed that these were the only services the Corporations provided, he did so only on the basis that they also "hired minors, such as [Robson]" (presenting no evidence of *other* minors hired by the Corporations), and that minors were sometimes present at Jackson's homes, which were staffed by corporate employees. (7RAA:4026.) Those claims do not convert the Corporations into youth organizations akin to schools, churches, and scouts. (6RAA:3337 ¶15, 3339 ¶21 [unrefuted declaration that Corporations were not in any childcare businesses].)

Nor is there any evidence that Robson was in the Corporations' custody. At best, Robson has presented evidence that Mrs. Robson sometimes left him in the custody of *Jackson personally*. (E.g., 9RAA:6812-6817.) That the Corporations provided administrative and household services to Jackson did not transform them into legal custodians of Jackson's houseguests, particularly given their lack of control over Jackson and his guests.

The record likewise belies Robson's claim that the Corporations "represent[ed] that Jackson was a safe and upstanding mentor." (AOB 39.) The only evidence Robson cites is

Mrs. Robson's observation that Jackson "mentor[ed]" Robson, and Robson's testimony as an adult that *Jackson* was a mentor. (AOB 37, 39, citing 9RAA:6945, 6954.) There is no evidence of any representations by the Corporations on this front.[12]

If the Corporations *had* made representations about Jackson, and/or Mrs. Robson had relied on them, Robson presumably would have presented a declaration to that effect (especially given that his counsel also represented Mrs. Robson, 8RAA:6736). His failure to do so speaks volumes. He likewise presented *no evidence* that he, his family, or anyone else hired the Corporations to provide "mentor[ing]" services. (AOB 37.) Indeed, as discussed above, Mrs. Robson did not even know what the Corporations did. (P. 29, *ante*.) To the extent Jackson mentored Robson, he did so based on his *personal* relationship with the Robsons. (9RAA:6879-6880, 6901-6902, 6945-6946.)

The undisputed evidence is that the Robson family trusted Jackson based on their *personal* relationship with him and his

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[12] Robson's misrepresentations of the record are not confined to these instances. In the same paragraph (mis)stating that the Corporations made these representations, Robson asserts that the Corporations arranged for Robson to join Jackson on tour. (AOB 37.) Robson *never* joined Jackson on tour. Indeed, Mrs. Robson ended contact with Jackson for several months because Jackson failed to call from tour. (9RAA:6860-6861.) The brief also notes that Robson "appear[ed] with Jackson on stage" (AOB 37), but that was when he was five years old and won the Australian dance contest sponsored by non-parties. (Pp. 23-24, *ante*.) This had *nothing* to do with the Corporations who (in any event) were not involved with Jackson's tours. (6RAA:3337, 3339.)

personal fame. (9RAA:6801-6811, 6817-6819; 4UAA:9072, 9075, 9077.) Mrs. Robson "just automatically trusted [Jackson]." (6RAA:3454-3455, 3457-3458; 4UAA:9077.) That "automatic trust[]" had nothing to do with the Corporations. This is very different from situations where parents trust a priest or teacher because those people are imbued with the authority of a church or school, which implicitly vouch for their fitness to work alone with children. It is also very different from those situations because, as discussed above, the Corporations had no ability to control Jackson—unlike a church or school that has the ability to control priests' or teachers' access to children.

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For all these reasons, the trial court correctly held that Robson had no special relationship with the Corporations.

3. Section 1714 does not impose a duty here either.

Searching for an alternative source of duty absent a special relationship, Robson invokes Civil Code section 1714. (AOB 45-51.) His argument is unavailing.

a. Section 1714 imposes a duty only where the defendant created or increased the risk of harm.

Section 1714 provides that, "[e]veryone is responsible" for "an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person …" (Civ. Code, § 1714.) The duty so created is not nearly

as broad as the language suggests at first blush. As the Supreme Court has explained, section 1714 imposes a general duty of care "*only* when it is the defendant who has created a risk of harm to the plaintiff, including when the defendant is responsible for making the plaintiff's position worse." (*Brown II*, *supra*, 11 Cal.5th at p. 214, internal quotation marks omitted, italics added.) Case law terms this standard "misfeasance," as contrasted with "nonfeasance," which does *not* give rise to a duty. (*Id*. at p. 215, fn. 6.)[13]

Under the cases applying section 1714, a no-duty finding does not require defendants to be pure "bystanders" who stumble upon the scene: "A defendant may have greater involvement in the plaintiff's activities than a chance spectator yet play no meaningful part in exposing the plaintiff to harm." (*Brown II*, *supra*, 11 Cal.5th at p. 214, fn. 5.) "The crux of the difference between misfeasance and nonfeasance for purposes of assessing a duty to protect is whether the third-party conduct was a *necessary component* of the [defendant's] conduct at issue." (*Uber*, *supra*, 79 Cal.App.5th at p. 427, italics added and quotation marks omitted.)

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[13] In *Brown II*, the Court criticized its prior embrace of the terms "misfeasance" and "nonfeasance" as "imprecise and prone to misinterpretation"; the proper question is "whether the actor's entire conduct created a risk of harm." (11 Cal.5th at p. 215, fn. 6.) We use the terms "misfeasance" and "nonfeasance" as shorthand for whether or not a party's conduct created or increased the risk of harm.

Consistent with the governing standard, numerous courts hold that, absent a special relationship, the defendant had no duty to protect the plaintiff because it did not create or increase the risk of harm ("nonfeasance"):

- *Sakiyama v. AMF Bowling Centers, Inc.* (2003) 110 Cal.App.4th 398, 402-409: The owner of a facility that hosted all-night "raves" had no duty to attendees injured in a car crash after they *foreseeably* stayed up all night taking drugs at the rave; driving under the influence was not a necessary component of hosting a rave.
- *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 527-535: A host who posted an invitation to his house party had no duty to protect guests from third-party attacks; even if foreseeable, the attacks were not a necessary component of the party.
- *Uber*, *supra*, 79 Cal.App.4th at pp. 427-429: Uber had no duty to protect passengers waiting for summoned drivers, even if it knew of and concealed prior instances of sexual assault by people pretending to be Uber drivers.

It is only where the defendant's conduct created an inherently dangerous condition, and the risk posed by the third party was a *necessary component* of defendant's conduct ("misfeasance") that courts have found a duty under section 1714. Robson's cited cases fall into this category:

- *Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716-717: A police officer created risk of harm for a driver whom he directed *to stop in the center median of the freeway*,

where driver was later struck; "the defendant [wa]s responsible for making the plaintiff's position worse."

- *Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 47-49: A radio station created the risk of harm by holding a contest encouraging teenagers to engage in a "high speed automobile chase" to locate a DJ; reckless driving was a necessary component of defendant's contest.
- *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1156: An employer had a duty to protect its employees' households from asbestos embedded in employees' clothing at work; asbestos exposure was a necessary component of employer's business.

b. The Corporations did not create or increase the risk of harm.

The trial court found that Robson failed to establish any *misfeasance* by the Corporations, as would impose a duty under section 1714. (9RAA:7236.) The court explained: Robson's evidence "do[es] not support the conclusion that Defendants created the peril (i.e. Jackson), but at most, after Plaintiff and Jackson had connected [citations], and after Plaintiff was first molested by Jackson [citations], Defendants provided transportation, security and similar services." (9RAA:7235.)

The court was correct.

(1) The Corporations played no meaningful role in bringing Jackson and the Robsons together.

The undisputed evidence dispels any notion that the Corporations played a meaningful role in bringing Jackson and Robson together. Robson became "obsess[ed]" with Jackson after Mrs. Robson showed him *The Making of Thriller*. (4UAA:9069.) The Corporations did not create Jackson's talent or fame, which existed long before the Corporations. Robson met Jackson as a prize for winning a dance contest that the Corporations had nothing to do with. (4UAA:9069-9070; 8RAA:6759; 9RAA:6797-6798.) After that brief meeting, Mrs. Robson tried to stay in touch with Jackson, but her letters to Jackson went unanswered. (4UA:9071.) That would have been the end of it all, *but for* Mrs. Robson's dogged efforts to get back in touch with Jackson when the family visited California years later. (4UAA:9071-9072; 9RAA:6803-6806.) She eventually found a number for Jackson's personal assistant, employed by MJJ Productions. (4UAA:9072; 9RAA:6805-6806.) Through the assistant, Jackson invited the Robsons to visit him at a non-party recording studio. (4UAA:9072; 9RAA:6807-6808.)

After spending time with the family at the studio, Jackson invited them to spend the weekend at Jackson's home. (4UAA:9072; 9RAA:6811.) Robson contends that Jackson began molesting him during that visit. (4UAA:9073.)

Other than Jackson's assistant answering Mrs. Robson's call and then relaying an invitation from Jackson, the creation

and development of Jackson and Robson's relationship had *nothing* to do with the Corporations. Picking up the phone and then relaying an invitation cannot be the basis for imposing a duty. Such a rule would inject potential liability into countless everyday interactions and turn the no-duty-to-protect rule on its head. Indeed, courts considering claims against third parties like schools, churches, daycares, and youth organizations—which, quite obviously, play *the key role* in connecting victims to abusers—consistently analyze whether a duty arises from a special relationship, *not* as "misfeasance" under section 1714. (See, e.g., *Doe v. U.S. Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1128-1140 (*Youth Soccer*); *Conti*, *supra*, 235 Cal.App.4th at pp. 1226-1228.)

(2) The Corporations' involvement after the Robsons befriended Jackson did not create a dangerous condition.

The Corporations' alleged conduct *after* the Robsons became friends with Jackson also does not give rise to a duty to protect under section 1714. Robson claims that the Corporations organized trips, sponsored his immigration, provided transportation, and staffed Jackson's residences. But doing so did not create an inherently dangerous condition *independent of* Jackson's alleged criminal tendencies. (Cf. *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 717-720, 726-727 [convicted pedophile's "mere presence" on family property is not a dangerous property condition triggering premises liability, even though

family knew he was likely to relapse and let him stay on property with child without warning parent].)

(3) The alleged molestation was not a necessary component of the Corporations' business.

The alleged molestation was not a "necessary component" of the Corporations' business, as required for a duty to arise absent a special relationship. (See § II.A.3.a., *ante*.) Their business was loaning out Jackson's services as a recording artist and joint venturer with Sony and, in Robson's version of events, providing administrative and household services to Jackson. (6RAA:3336-3339; 4UAA:9082, 9084, 9088, 9099-9100.) Risk of molestation is not a necessary component of any of this.

(4) Robson's arguments are unavailing.

None of Robson's hodgepodge of arguments overcomes the foregoing.

Foreseeability. Robson argues that the Corporations owed a duty because Jackson's misconduct was foreseeable, or their conduct foreseeably permitted Jackson's misconduct. (AOB 46, 49-50.) Foreseeability is irrelevant to the first step of the duty inquiry; it is only relevant to the second step, the *Rowland* analysis. (*Uber*, *supra*, 79 Cal.App.5th at pp. 426-429.) Moreover, when analyzing foreseeability under *Rowland*, courts "analyze third party criminal acts differently from ordinary negligence," and "apply a heightened sense of foreseeability" to claims that a defendant is liable for another's crimes. (*Wiener v. Southcoast*

Childcare Centers, Inc. (2004) 32 Cal.4th 1138, 1149-1150.) The Restatement section Robson relies upon (AOB 50) does not change this. As *Brown II* noted, that section—Restatement (Third) of Torts section 19—addresses conduct that increases the risk of harm by a third party. (*Brown II*, *supra*, 11 Cal.5th at p. 219, fn. 8.) The general language of the section and comments cannot substitute for applying the extensive body of specific California cases on this subject already discussed above.

Knowledge. Robson contends that certain low-level employees were aware of alleged abuse. (AOB 47.) Even accepting his point arguendo, people generally have no duty to warn or protect *even when* they are aware of a danger that a known pedophile poses, unless they are a mandatory reporter or have a special relationship with the perpetrator or victim. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203; see also *Eric J.*, *supra*, 76 Cal.App.4th at p. 727; *Conti*, *supra*, 235 Cal.App.4th at pp. 1226-1227 [both finding no duty to warn].) There was no special relationship here; and Robson has abandoned his trial court argument that the Corporations' employees were mandatory reporters, by failing to develop it in his Opening Brief. (*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8.) In any event, Robson's mother *knew* about the allegations that Jackson molested Robson and another boy; she simply did not believe them. (E.g., 6RAA:3434, 3515-3518; 9RAA:6917-6920; 4UAA:9077-9081.)

Organizer liability. Robson cites a concurring opinion from *Brown II*, where a justice mused—on a question that "isn't

before us"—that a court might find that the organizer of an activity where the harm occurred created a risk giving rise to a duty. (AOB 48-49, citing *Brown II, supra*, 11 Cal.5th at pp. 226-227 (conc. Opn. of Cuéllar, J.).) Musings in a concurring opinion on an issue not before the court are not the law. Moreover, the organizer in *Brown II* was a national sports organization whose "central function" was to coordinate sports for athletes; it certified and oversaw each sport's governing body, which athletes had to join and train under. (11 Cal.5th at p. 210.) That central role in bringing athletes and coaches together is a far cry from the Corporations' role here—relaying invitations after Jackson and the Robsons had already met, coordinating logistics at Jackson's request, and the like.

Involvement of minors. Robson argues that there is a heightened duty to protect minors. (AOB 49.) But the Supreme Court recently rejected an invitation to take a "flexible and holistic approach to duty" in cases involving minors. (*Brown II*, *supra*, 11 Cal.5th at p. 220.) The Court emphasized the "policy judgment of considerable standing" that defendants are not liable for harms they did not cause "unless there are special circumstances—such as a special relationship to the parties—that give the defendant a special obligation to offer protection or assistance." (*Ibid.*)

Pamela L. Robson relies on *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206, which held that a woman owed a duty of care to children she invited to her swimming pool while only her husband, a convicted sex offender, was home. (*Id.* at p. 208.) The

wife's encouraging the children to come to her home, coupled with assurances to their parents that they would be safe, created the risk of harm. (*Id.* at p. 210.) That is far afield from the facts here. The *Pamela L.* plaintiffs would have had no contact with the offender absent the wife's invitation. By contrast, Robson met Jackson through a dance contest not involving the Corporations; his family befriended Jackson without the Corporations' meaningful involvement; and had the Corporations not existed, Jackson and Robson still would have been in the same position because Jackson could have arranged the logistics of their meetings himself or had someone else do it. (4UAA:9069-9072, 9075-9076; *K.G.*, *supra*, 46 Cal.App.5th at pp. 628, 633 [father whose financial support allowed son to buy drugs that killed son's girlfriend had no duty to girlfriend: son could "have pursued other financial avenues to obtain drugs"].) Unlike the wife in *Pamela L.*, no one invited Robson to premises under the Corporations' control and no one made representations of safety to the Robsons. The Corporations simply were not a necessary component of what brought Jackson and Robson together. They cannot be said to have created or increased the risk of harm.

4. In any event, the *Rowland* factors compel rejecting a duty for a corporation to police its sole owner's personal conduct.

Because the Corporations had no duty to protect Robson, either via a special relationship or section 1714 misfeasance, the Court need not move to the second step of the analysis: whether the *Rowland* factors counsel limiting that duty. (*Brown II, supra*,

11 Cal.5th at p. 209.) But even if the first step were met, the *Rowland* factors counsel against imposing a duty where the alleged perpetrator completely controlled the defendant entities.

a. The Rowland analysis is before the Court.

As a threshold matter, Robson contends that the Court cannot affirm based on a *Rowland* analysis because the Corporations did not argue *Rowland* below. (AOB 52.) Robson is wrong.

Regardless of whether the Corporations expressly framed their argument below as based on *Rowland*, the analysis they present relies on the same facts and policy arguments presented to the trial court. (E.g., 6RAA:3291-3292.) And Robson has pre-emptively briefed the issue, putting it squarely before this Court. (AOB 51-56.) The Court should address it if it reaches this stage of the analysis, especially given that application of *Rowland* is a question of law (*Brown II*, *supra*, 11 Cal.5th at p. 213), and can thus be addressed for the first time on appeal (*Mitchell v. United National Ins. Co.* (2005) 127 Cal.App.4th 457, 471-472).

b. The *Rowland* factors reflect policy considerations that shape whether courts will impose a duty.

The *Rowland* factors include: "'[1] the foreseeability of harm to the plaintiff, [2] the degree of certainty that the plaintiff suffered injury, [3] the closeness of the connection between the defendant's conduct and the injury suffered, [4] the moral blame

attached to the defendant's conduct, [5] the policy of preventing future harm, [6] the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and [7] the availability, cost, and prevalence of insurance for the risk involved.'" (*Regents*, *supra*, 4 Cal.5th at p. 628.)

Courts do not "merely count up the factors on either side"; rather, the factors guide the policy analysis of whether to impose a duty in a given type of case. (*Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077, 1092.)

Moreover, the analysis must be tailored to "the *specific* action or actions the plaintiff claims the defendant had a duty to undertake." (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1214, italics added.) "'Only after the scope of the duty under consideration is defined may a court meaningfully undertake the balancing analysis …'" (*Ibid.*)

Robson's contrary argument, that what actions the Corporations should have taken is irrelevant to the duty analysis, (AOB 56), is wrong. It is not for this Court to conjure up what "specific action or actions [Robson] claims the [Corporations] had a duty to undertake." (*Castaneda*, *supra*, 41 Cal.4th at p. 1214.)

The closest Robson comes to identifying proposed duties is his cursory assertion that the risk to him would have been reduced had the Corporations: "not arranged for [him] to be hand-delivered to Jackson"; warned Robson's family or reported suspicions to police; or limited Jackson's unsupervised contact with children. (AOB 54.) In essence, then, the duties he proposes

were for the Corporations to (1) police/control their sole shareholder, and (2) warn/report their sole shareholder to police or Robson's family. The *Rowland* factors cut against any such duties. We address the proposed policing/control duty here, and the duty to warn or report later, in addressing Robson's failure-to-warn claim. (Pp. 67-70, *post*.)

c. *Rowland* does *not* support imposing a duty on corporations to police their sole shareholder's non-corporate conduct.

Rowland's policy concerns counsel against imposing a duty on Corporations to police their sole shareholder. The burdens of requiring an entity to police its sole shareholder in his own home and other non-corporate locations would be high. Meanwhile, the benefits—in terms of preventing future harm or allocating costs—would be non-existent or *de minimis* at best. (*Barenborg*, *supra*, 33 Cal.App.5th at p. 78 [no duty where purported duty would not "meaningfully reduce the risk of the harm that actually occurred"]; Rest.3d Torts, *supra*, § 37 com. (e) ["courts aggressively employ no duty when it is dubious that any precaution an actor-defendant might have taken would have prevented the plaintiff's harm"].)

Since the Corporations had no control over Jackson, Robson apparently asserts that low-level employees should have defied Jackson's instructions to extend invitations and arrange transportation, or refused to leave Jackson alone with guests. It is unclear how this could work under basic tenets of corporate

hierarchy. A duty requiring low-level employees to defy orders could only be imposed on the *individual employee*—not on an entity that is under the complete control of the person issuing those orders.

In addition to that fatal problem—which should end the matter—the proposed duty poses other serious policy problems:

- The proposal would force low-level employees to try to determine when *suspicion* about a corporate superior *requires* insubordination. How certain must an employee be that her boss poses a threat before she refuses to comply with an otherwise banal request, like booking routine travel plans, relaying invitations, or answering phone calls?

- Refusing to follow a superior's instructions would likely require employees to say that they suspect that the superior is a pedophile. This would expose the employee to defamation liability. (*Cuff v. Grossmont Union High School Dist.* (2013) 221 Cal.App.4th 582, 584-585, 591 [defamation claim can proceed where school counselor reported to boys' father that mother was abusing them; mandated reporters *only* permitted to report to law enforcement].)

- Any duty to defy instructions would not prevent future harm, because employees would likely be fired and replaced by another.

- Any duty (and resulting potential liability) imposed on *corporate entities* controlled by the alleged perpetrator would not incentivize lower-level *employees* to take insubordinate action that would result in termination of their employment.

Robson's proposed duty would be particularly onerous, because it would require corporate employees to police what happens in the owner's private residences, in private time. (Pp. 44-45, *ante*.) Moreover, because the corporate duty would require insubordination of low-level employees, the duty is akin to "absolute liability," and it is doubtful that insurance would be available. (*Colonial Van*, *supra*, 76 Cal.App.5th at p. 505.)

Finally, in most cases, Robson's proposed duty for corporations to police their sole shareholder would have *no effect* on the allocation of risk or the compensation available to alleged victims. Where the plaintiff sues while the perpetrator is alive, or complies with the Probate Code's deadlines, recovery is available from the perpetrator and all corporations he wholly owned (as they are part of the perpetrator's recoverable assets); nothing more is gained by also permitting a tort suit directly against the corporation. Public policy does not warrant imposing a tort duty on corporations to police their sole shareholders (the duty Robson seeks here), as a loophole for plaintiffs who fail to timely sue the perpetrator or his estate.

d. Robson's *Rowland* arguments are unpersuasive.

None of Robson's *Rowland* arguments overcome the foregoing analysis.

Foreseeability. Robson argues that there must be a duty here because it is "generally foreseeable" that adults in a position of "power or authority" over a child may sexually abuse them. (AOB 53-54.) Assuming *arguendo* that is true, Robson's argument

proves too much—it would essentially eliminate the *Rowland* analysis in any case involving allegations of child sexual abuse and turn everyone into a mandatory reporter. That is not the law. Robson cites no authority to the contrary. Moreover, as noted above, the Supreme Court recently refused to abandon the requirement of a special relationship or control, *despite* the "problem of sexual abuse of minors in organized youth sports and other activities." (*Brown II*, *supra*, 11 Cal.5th at p. 220.) There are other relevant policy considerations to balance. (*Ibid.*) And as discussed above, they counsel against imposing a duty for corporations to police their sole shareholder's private life in non-corporate settings.

Closeness of connection. Contrary to Robson's assertion (AOB 54), there was *no* close connection between the Corporations' conduct and his alleged sexual abuse. The Robson family sought and established a *personal* relationship with Jackson, and as the trial court correctly found, Robson presented *no evidence* that he was in *the Corporations'* custody, or in places they controlled, when he was allegedly molested. (9RAA:7238.) It was *Robson's parents* who allowed their son to sleep in Jackson's bedroom. (4UAA: 9077, 9081.) And the failure to report Jackson or warn Robson's parents about suspicions regarding Jackson would have made no difference, given that Robson's mother allowed Robson to continue sleeping in Jackson's room *even after* a reporter told her in 1992 he suspected Robson was being abused; *even after*, a year later, police opened *a criminal investigation* against Jackson, and police, prosecutors and civil

attorneys told Robson's mother that they suspected Jackson had molested Robson. (§ IV.B.1., *post*.) The supposed "close connection" Robson asserts is illusory. (Cf. *Eric J.*, *supra*, 76 Cal.App.4th at pp. 718-730 [family members *hosting* a child and convicted pedophile *at their home* had no duty to warn child's family absent a special relationship].)

Public policy/burden. Robson asserts that the Corporations bear moral blame for not protecting him, and stresses the goal of protecting children. (AOB 55.) But that assumes that the Corporations *could* protect him. As discussed above, they could not. A duty for a corporation to police its sole shareholder would be unworkable, and would achieve nothing in most situations.

Meanwhile, the burden would be high. Robson misses the whole picture in asserting that protecting minors would require no more than extending safeguards that he presumes were already in place to protect against sexual harassment between adult employees. (AOB 56.) The situation here is not remotely like harassment by one regular employee against another; it is alleged harassment by the corporation's sole shareholder at places unconnected to the corporation's business. In that situation, the appropriate path is to subject the *owner* to liability for his conduct—not to impose an unworkable duty on the corporation.

The bottom line: To the extent the Court finds some special relationship or other circumstance that might create a duty, it should nonetheless reject a duty under the *Rowland* factors.

B. Robson's negligence claims fail for other reasons, too.

Even if the duty analysis did not compel summary judgment on all of Robson's negligence claims, those claims would fail for other, independent reasons. We demonstrate later in this brief that Robson cannot establish causation, which is fatal to his entire case. (§ IV., *post*.) Before turning to that, we address additional holes in his specific negligence claims.

1. The Corporations cannot be liable for negligently supervising, retaining, or hiring their sole owner.

Robson's negligent supervision and retention/hiring claims ignore a fundamental point: A corporation cannot *negligently* exercise powers it does not have. (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1188 ["the jury needed to answer the question of whether AEG hired Dr. Murray before it could determine if AEG negligently hired, retained, or supervised him"].)

The undisputed evidence here is that the Corporations did not "hire" Jackson. Just the opposite: Jackson created *them*. (4UAA:9065-9066, 9082, 9084-9091; 6RAA:3336-3339.) Nor could the Corporations supervise or fire Jackson. As sole shareholder, Jackson had complete control over the Corporations. And Robson's contentions that the Corporations should have refrained from "hiring" Jackson—or should have fired him—make no sense. MJJ Productions was formed to furnish Jackson's services as a recording artist and MJJ Ventures was formed to provide

Jackson's services in a joint venture with Sony. (4UAA:9084, 9088; 6RAA:3337, 3339.) The Corporations were not like a school or church that could hire a different teacher or priest. Jackson was *the sole reason* the Corporations existed.

In these circumstances, there can be no liability for negligent hiring, retention, or supervision. (*In re Donahue Securities, Inc.* (Bankr. S.D. Ohio 2004) 318 B.R. 667, 677-678 [corporation's compliance officer not liable for negligent supervision of sole shareholder because shareholder had "ultimate authority" over employees, including compliance officer]; *Coit*, *supra*, 14 Cal.App.4th at p. 1605 ["there was no way Coit, the corporate entity, could have disciplined or supervised its president, chairman of the board, and major shareholder"].)

2. The Corporations had no duty to warn or educate Robson's family about Jackson.

The lack of a special relationship is fatal to Robson's failure-to-warn/education claim, because as discussed above, there is no duty to warn or educate people endangered by a third-party's conduct. (P. 56, *ante*.)

But even if there were a special relationship, *Rowland* would counsel against imposing a duty on *Jackson's own companies* to warn, train or educate Robson about the dangers *Jackson himself* allegedly posed. *Youth Soccer* and *Conti* are instructive.

In *Youth Soccer*, the court found a special relationship between youth soccer organizations and youth players. (8 Cal.App.5th at pp. 1130-1131, 1135.) Based on this special

relationship, it found a duty to conduct criminal background checks of coaches. (*Id.* at p. 1138.)

Nevertheless, the *Youth Soccer* court *rejected* plaintiff's claim that defendants had a duty to warn, train, or educate children about the risk of sexual abuse because, as "sports organizations," defendants were neither well-suited, nor expected, to take on that role. (*Id.* at pp. 1138-1139.) This rationale is even stronger here. If a parent would not expect a youth sports organization to train or educate families about sexual abuse, a parent would not reasonably expect *celebrity loan-out companies* to do so. Mrs. Robson's testimony regarding the Corporations does not support such an expectation: She understood them just to be entities Jackson used for his projects. (4UAA:9082; 9RAA:6896-6897.)

Robson argues that the Corporations knew about or suspected the danger Jackson allegedly posed. (AOB 47.) That is beside the point: In evaluating a potential duty to train and educate, the *Youth Soccer* court did not focus on whether the league knew about prior abuse. The court instead focused on the fact that parents would not expect "youth sports organizations" to take on the role of training children about sexual abuse. (8 Cal.App.5th at pp. 1138-1139.)

Conti, similarly, dispels any notion that a duty to warn existed here, *even if* the Corporations knew that Jackson was dangerous. In *Conti*, a minor in a religious congregation was molested by an adult congregant after they partnered for door-to-door field service. (235 Cal.App.4th at p. 1222.) The court found

that church leadership exercised sufficient control over the field service to impose a duty to restrict and supervise the adult congregant's participation. (*Id.* at pp. 1233-1235.)

However, the *Conti* court held that church leaders had no duty to warn of dangers posed by the adult congregant even though *they knew he had previously molested another child*. (*Id.* at pp. 1227-1231.) Requiring churches to continuously monitor members for inappropriate behavior, and to gauge what behavior justifies warning another member about possible harm, would be overly burdensome. (*Id.* at p. 1231.) The same is true as to corporations where the source of potential danger is their sole shareholder who they do not control. (§ II.A.1., *ante*.)

Not only would imposing the duty Robson urges be beyond reasonable expectations for solely-owned loan-out companies and burdensome, it would raise constitutional concerns. Since Jackson controlled the Corporations, imposing a duty to warn would require *Jackson himself* to personally disclose *and direct others* to disclose his supposed criminal inclinations. A duty to disclose *one's own* criminal conduct runs afoul of constitutional protections against self-incrimination. (*Kassey S. v. City of Turlock* (2013) 212 Cal.App.4th 1276, 1280 [imposing duty on mandatory reporters to self-report would violate Fifth Amendment].)

A duty requiring employees working under Jackson to warn others about potential dangers posed by their boss also creates the same problems as a duty requiring low-level employees to defy their boss's orders. (Pp. 61-63, *ante*.) Whether suspicions are

correct or not, an employee publicly warning others that her boss may be a pedophile would likely be instantly fired and sued for defamation. (*Cuff*, *supra*, 221 Cal.App.4th at pp. 590-591.) Such a duty would create heavy burdens on companies and employees but would be unlikely to prevent future harm.

III. The trial court also correctly adjudicated Robson's claims that are not based on negligence.

In addition to four negligence claims, Robson alleged claims for breach of fiduciary duty and intentional infliction of emotional distress. (1RAA:48.) The trial court granted summary judgment for the Corporations on both claims. (9RAA:7236-7238.) Robson has shown no error.

A. Robson has no viable claim against the Corporations for intentional infliction of emotional distress.

Robson's intentional infliction claim fails for many reasons.

No evidence. Robson's claim requires him to prove that the Corporations' employees, acting within the course and scope of their employment, engaged in "extreme and outrageous conduct," *intending to cause*, or with *reckless disregard* of the probability of causing, emotional distress. (*Delfino v. Agilent Technologies, Inc*. (2006) 145 Cal.App.4th 790, 808.) There is no evidence meeting that standard. Sexual abuse is, of course, "extreme and outrageous conduct." But even Robson has not argued that Jackson's alleged abuse was within the course or scope of Jackson's employment. The alleged abuse therefore cannot be the basis for liability. (*Id*. at pp. 813-814 [no

respondeat superior for intentional infliction caused by use of company computer to send cyberthreats, because employee "'substantially deviate[d] from the employment duties for personal purposes'"]; *Quarry v. Doe I* (2012) 53 Cal.4th 945, 961, fn. 4 [childhood sexual abuse not within course or scope of employment].)

Robson instead argues that the Corporations engaged in extreme and outrageous conduct by *procuring* Robson for Jackson, i.e., by arranging for Robson to meet with Jackson intending that abuse would occur. (See AOB 58; 1RAA:51, 54.) The evidence belies his claim.

Procurement requires making a child available to another "*for the purpose of* engaging in" childhood sexual abuse. (*Joseph v. Johnson* (2009) 178 Cal.App.4th 1404, 1414, italics added.) Robson points to nothing showing that he was "procured" by the Corporations' employees. The undisputed evidence is that the Corporations had no material role in the Robsons and Jackson meeting and developing a relationship: Jackson's assistant merely answered Mrs. Robson's call when Mrs. Robson tried to reconnect with Jackson in 1990, and then relayed an invitation from Jackson. There is no *evidence* that Jackson's assistant did those things for the purpose of Robson's abuse.

There is likewise no evidence that when the Corporations' employees arranged the logistics of his visits to the Ranch and elsewhere, they did so with *knowledge* and *intent* of making him available *for the purpose of being abused*. Robson points to his own testimony accusing Jackson's assistants (Staikos and Evvy

Tavasci) of organizing his meetings with Jackson. (AOB 58, citing 8RAA:6646, 6653.) But Robson admits that he does not know whether Staikos or Tavasci were aware of alleged abuse. (8RAA:6646-6647.) Tavasci *denies* knowledge of Jackson's alleged criminal proclivities. (8RAA:6339-6340, 6344-6345, 6357, 6401.) There is likewise no evidence that Staikos knew of the alleged danger to Robson—much less that she or Tavasci acted *with a purpose that he be abused*.

To the extent Robson intimates that the Corporations' sponsorship of his immigration was procurement, that theory is equally unsupported by evidence. *Mrs. Robson asked* the Corporations to sponsor Robson's immigration. (4UAA:9074-9075; 6RAA:3489-3490; see p. 25, fn. 3, *ante*.) She testified that she would have maintained her relationship with Jackson *even if* he had not agreed to sponsor the immigration. (6RAA:3497-3498.) Their immigration was not "procured" by the Corporations. Federal law made visas available to those like Robson who had unique personal talent. (Pp. 25, *ante*.) Agreeing to Mrs. Robson's request to assist in lawfully obtaining such visas is not "extreme and outrageous."

No criminal procurement by a corporation. Robson's claim also fails because it boils down to a claim that the Corporations' employees engaged in criminal procurement. He cannot pursue the claim on a respondeat superior theory, because procurement would be outside the scope of employment. Procurement is itself a *direct* act of childhood sexual abuse, (*Joseph*, *supra*, 178 Cal.App.3d at pp. 1414-1415), and thus is not

within the course or scope of employment. (*Quarry*, *supra*, 53 Cal.4th p. 961, fn. 4.) It certainly had nothing to do with the Corporations' businesses. (*Delfino*, *supra*, 145 Cal.App.4th 790, 813-814 [use of work computer to make cyberthreats was not in course or scope of employment so no liability for intentional infliction].)

Nor can the Corporations be liable on a direct-liability theory. Robson's claim relies on Code of Civil Procedure section 340.1's statute-of-limitations revival. Allegations of procurement are direct perpetrator actions governed by section 340.1(a)(1). (*Joseph*, *supra,* 178 Cal.App.4th at pp. 1412-1415 [allegations that individual procured children governed by subdivision (a)(1), not subdivision (a)(3)].) Section 340.1(a)(1) only revives claims against individuals, *not against entities*. (*Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428, 447-448.) Robson's procurement claim against the Corporations, thus, was *not* revived; it fails as a matter of law. (*Id.* at pp. 433, 448-449 [intentional infliction claim against entity based on procurement by employees was direct perpetrator claim, outside scope of section 340.1(a)(1)].)

Robson misses the point in arguing that he is not depending on the "direct perpetrator statute of limitations." (AOB 57-58, fn. 7.) He may not have *invoked* section 340.1(a)(1)'s direct perpetrator statute of limitations, but his claim is one for direct liability for direct acts of childhood sexual abuse (procurement), which is what section 340.1(a)(1) covers. Yet, section 340.1(a)(1) excludes entities. Robson cannot circumvent

that exclusion by alleging conduct that amounts to a direct perpetrator claim but invoking a non-direct-perpetrator revival provision.

Nor is there merit to Robson's assertion (AOB 57) that the Corporations' position in the prior appeal bars them from arguing that section 340.1(a)(1) precludes his intentional infliction claim. Robson does not specify what would bar the claim or develop any reasoned argument, much less one supported by legal authority. He therefore has forfeited the point. (*Arnold v. Dignity Health* (2020) 53 Cal.App.5th 412, 422.)

Robson's argument fails regardless. He *appears* to be invoking judicial estoppel. Judicial estoppel requires proving that a party has taken two "totally inconsistent" positions, and the first position was not taken because of ignorance, fraud, or mistake. (*Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 121.) Robson cannot show that.

The prior appeal involved whether Robson's claims fell within former section 340.1(b)(2)'s "narrow exception" to the then-requirement that claims be brought before plaintiff's 26th birthday. (43 Cal.App.5th at pp. 1097-1100.) While that appeal was pending, the age-26-cutoff was retroactively extended to 40, which the parties agreed mooted the appeal's central issue. Here, the issue has nothing to do with former section 340.1(b)(2). Rather, the Corporations contend that to the extent Robson's intentional infliction claim is based on allegations of procurement, it is time-barred under *section 340.1(a)(1)*. That position is not "totally inconsistent" with the Corporations'

agreement in the prior appeal that the statutory amendment mooted the trial court's prior judgment. The "extraordinary remedy" of judicial estoppel is inapplicable. (*Filtzer v. Ernst* (2022) 79 Cal.App.5th 579, 588.)

B. Robson has no fiduciary duty claim, because there is no evidence of a fiduciary relationship.

The trial court correctly granted summary judgment on Robson's breach of fiduciary duty claim, because Robson has no evidence that the Corporations were his fiduciaries. (9RAA:7238.)

The Supreme Court has made clear that fiduciary relationships exist *only* where one party "knowingly undertake[s] to act on behalf and for the benefit of another" or "enter[s] into a relationship which imposes that undertaking as a matter of law." (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 386.) The Court accordingly found no fiduciary duty where there was no showing that one party entered a relationship "with the view of acting primarily for the benefit of" the other or to "subordinate its interests" to the other. (*Ibid.*)

Robson cannot meet this standard.

Pre-City of Hope cases. Robson starts with a faulty premise. He relies on two pre-*City of Hope* Court of Appeal decisions as framing the standard for fiduciary relationships. (AOB 59.) Neither is on-point. One involved an attorney-client relationship, which is a paradigmatic fiduciary relationship; the other does not discuss fiduciary duties at all. (*Barbara A. v. John G.* (1983) 145 Cal.App.3d 369; *Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808.)

Regardless, both are superseded by *City of Hope*'s clarification that entrusting one's affairs to another, or being vulnerable to another, does not itself create a fiduciary relationship. These characteristics "are common in many a contractual arrangement, yet do not necessarily give rise to a fiduciary relationship." (*City of Hope*, *supra*, 43 Cal.4th at p. 388.)

Employment. Robson asserts that his employment by the Corporations created a fiduciary relationship. But employment generally is *not* a fiduciary relationship. (*O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 811.) An employer does not hire an employee "with the view of acting primarily for the benefit of" the employee, or "subordinating its interests" to her. Quite the opposite: Employees work for their *employer's* benefit with "undivided loyalty" towards the employer. (*Fowler v. Varian Associates, Inc.* (1987) 196 Cal.App.3d 34, 41.) Robson emphasizes that he was a minor (AOB 60), but cites no authority indicating that employment becomes a fiduciary relationship merely because the employee is a minor. Nor is there anything about Robson's limited employment here that would make the relationship fiduciary. The "employment" consisted of him appearing in three music videos and recording an album. (4UAA:9096-9097.)

Mentorship/oversight. Robson asserts that the Corporations were his fiduciaries because they supposedly "oversaw his career, dance instruction, training, clothing, food, travel, and accommodations." (AOB 60.) But again, there is *no evidence* to support his assertion, as required on summary

judgment. (*Aguilar*, *supra*, 25 Cal.4th at p. 849.) Robson's mother testified that Jackson—not the Corporations—offered to help with Robson's career, but ultimately Jackson was little help. He "just didn't understand what needed to be done." (9RAA:6877-6886, 6896-6897.) Merely providing administrative and household services to Jackson and his guests does not create *fiduciary* relationships.

Nor is there evidence supporting Robson's suggestions (AOB 60) that the Corporations had custody of him, or that Jackson mentored him as the Corporations' agent. As the trial court correctly found, Robson presented *no evidence* that he was ever in the Corporations' custody. (9RAA:7238.) There is likewise no evidence that Robson hired the Corporations to provide Jackson's mentoring services. Any mentoring that occurred was in the context of Jackson's *personal friendship* with the Robson family. (9RAA:6901-6902, 6967.)

There is no evidence that the Corporations knowingly entered a relationship "with the view of acting primarily for" Robson's benefit or "subordinat[ing] its interests" to his. (*City of Hope*, *supra*, 43 Cal.4th at p. 386.) Robson, thus, failed to establish a triable issue on any fiduciary relationship.

IV. All of Robson's claims also fail for the independent reason that Robson cannot prove causation.

In addition to the grounds addressed above, the Corporations moved for summary judgment on all claims based on the lack of evidence that the Corporations' conduct was the legal cause of the alleged abuse. (6RAA:3267.) The trial court did

not reach this argument, because it granted summary judgment on other grounds. (9RAA:7232.) But this Court must affirm the judgment if it is correct on any ground supported by the record. (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 630.) Robson's inability to proffer sufficient proof of causation compels affirmance on all claims.

A. All claims require Robson to prove that the Corporations' tortious conduct *caused* his alleged harm.

"'Causation' is an essential element of a tort action. Defendants are not liable unless their conduct ... was a 'legal cause' of plaintiff's injury." (*Johnson & Johnson Talcum Powder Cases* (2019) 37 Cal.App.5th 292, 323.) It is also a prerequisite for the extended statute of limitations on which all of Robson's claims rely. (Code Civ. Proc., § 340.1, subds. (a)(2), (a)(3) [extending limitations period only if entity is "a legal cause of the childhood sexual assault"].) To recover on any claim, therefore, Robson must prove that the Corporations' allegedly tortious conduct was a legal cause of his alleged abuse.

Legal cause—or more classically, "proximate cause"—is one which "produced the injury or damage complained of and without which such result would not have occurred." (*State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 857, brackets and quotation marks omitted.) Proving proximate cause requires evidence that "the defendant's act or omission was a 'substantial factor' in bringing about the injury." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 778.) "[W]here the facts are such that

the only reasonable conclusion is an absence of causation, the question is one of law, not of fact." (*State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 353.)

B. Robson cannot prove that the Corporations' allegedly tortious conduct was a legal cause of his alleged abuse by Jackson.

Robson cannot establish legal cause here. Below, he argued that the Corporations were the legal cause of abuse by their failures to: (1) report Jackson or warn Robson and his family about him; (2) fire or not hire Jackson; and/or (3) prevent Robson from spending time with Jackson, apparently by refusing to make arrangements for Robson to be with him or by insisting on chaperoning them. (4UAA:9053-9054.) But the undisputed evidence here permits only one conclusion: None of those things would have prevented the claimed sexual abuse.

1. The evidence shows that Mrs. Robson continued to let Robson be alone with Jackson *even after* repeatedly being told that others suspected Robson was being abused.

Robson argues that the Corporations' employees should have reported suspicions about Jackson to law enforcement or to Mrs. Robson. Any failure to report did not cause the harm here. In July 1992, during the period Robson alleges the abuse occurred, a reporter told Mrs. Robson that he suspected Jackson was molesting Robson. (9RAA:6917-6920.) Then, beginning in 1993, also during the period of alleged abuse, law enforcement

officials publicly investigated allegations that Jackson had abused children, including allegations that Jackson had abused Robson himself. Former employees of the Corporations reported their alleged suspicions, and prosecutors and civil attorneys told Mrs. Robson about them. (4UAA:9077-9081.)

Despite police twice coming to the Robsons' house to question them about Robson allegedly being abused, despite being dragged before a grand jury where prosecutors repeatedly claimed that her son was abused, and despite being deposed in a civil case by attorneys making these same claims, Mrs. Robson did not believe the allegations. She continued to let her son spend time alone with Jackson. (4UAA:9077-9081.)

One need only look at the testimony of Mrs. Robson during her examinations to confirm this.

In questioning by District Attorney Thomas Sneddon, Mrs. Robson confirmed that she believed Robson was not abused *even though* she was "aware of the fact it was very common for children to lie to their parents when asked about something like that because of the relationship with the parent." (4UAA:9078, 6RAA:3528, 7RAA:3816.) She told Sneddon that her faith in Jackson would not change if "there were witnesses who said they saw [her] son molested by Michael Jackson." Those witnesses were "lying," she said. "I know my son, and I know Michael." (4UAA:9079, 6RAA:3529-3530, 7RAA:3817.) When asked by Sneddon whether her faith in Jackson would change if Jackson had "photographs of your son naked," Mrs. Robson responded that her opinion would not change because she knew there were

no such photographs (she was right). (4UAA:9079, 6RAA:3531-3532, 7RAA:3817-3818.)

Separately, when asked at deposition in early 1994 about allegations by a former housecleaner at the Ranch, Blanca Francia, who claimed she saw Robson and Jackson showering together, Mrs. Robson answered that she was aware of Francia's allegations, had discussed them with Robson, and did not believe them. (4UAA:9080, 6RAA:3516-3517.)[14]

In short, warnings and reports to Mrs. Robson by reporters, by prosecutors, by police, and by the Corporations' employees changed nothing. Robson denied being abused, and Mrs. Robson was so convinced of Jackson's innocence that she continued to allow Robson to sleep in Jackson's bed. (4UAA:9081, 7RAA:3860.) Given these *undisputed facts*, no reasonable juror could find that any failure by the Corporations' employees to report Jackson, or warn the Robsons, was a legal cause of the alleged abuse.

Pipitone v. Williams (2016) 244 Cal.App.4th 1437 is on point. There, a man murdered his wife. (*Id.* at p. 1439.) Weeks earlier, physicians had treated the wife because the man drove over her foot. (*Id.* at pp. 1440-1442.) A wrongful death suit claimed that the doctors' failure to report spousal abuse was negligent and violated the doctors' mandatory reporting obligations. (*Id.* at p. 1442.) The court affirmed summary judgment for the doctors on *both* duty and causation. (*Id.* at

[14] Although immaterial here, Francia admitted at deposition in this case that she had only seen and heard Jackson in the shower. (7RAA:3867-3878.)

p. 1460.) Because others had reported the husband to the police, police had interviewed the wife, and police had taken no actions preventing the murder, there was no evidence to suggest that the outcome would have changed had *the doctors* also reported the husband. (*Ibid*.) The same analysis applies here.

2. The Corporations' firing, or not hiring, Jackson would not have changed anything.

Even if one were to indulge in the fiction that the Corporations could have not hired Jackson, or fired him (but see § II.B.1., *ante*), the failure to take those steps would make no difference.

Hypothesize a world where the Corporations never "hired" Jackson, or where they later "fired" him. There is no indication that *if* Jackson had not been hired by the Corporations, the Robsons would have known, or cared. Nor would "firing" Jackson have changed anything. There is no reason the Robsons would even be aware of the "firing" or the reasons for it (private companies generally do not publicize *when* and *why* they fire people).

In such a world, Michael Jackson would have still been Michael Jackson, the world-famous recording artist and entertainer. Jackson's career did not depend on his association with these largely unknown loan-out companies—he was a star before either company existed. (4UAA:9065.) Jackson's talent would not have disappeared. He could still record songs, write music, produce videos, perform at concerts, etc. He would still be

world-famous and paid as such. The Robsons would have still met, pursued, and continued their friendship with Michael Jackson, the famed entertainer. (9RAA:6901-6902.)

This *sharply contrasts* with, for example, a school held liable for negligent hiring, retention or supervision of an abusive teacher. There, the relationship between child, family and teacher depends upon the teacher's position with the school. The school implicitly vouches that the teacher is competent to be alone with a child, as that is inherent in the job. Crucially, not hiring an abusive teacher would stop the exposure to the abusive teacher before it began; and firing the teacher would end the exposure. That is not the case here. Robson was exposed to Jackson because of who he was personally, not because of Jackson's relationship with the Corporations. Mrs. Robson testified that she trusted Jackson because of who he was *personally*. (4UAA:9077, 6RAA3509-3510,) That had *nothing* to do with the Corporations, about whom she knew almost nothing. (6RAA:3493-3494.) The Corporations' firing, or not "hiring," Jackson would not have prevented the alleged abuse.

3. Refusing to make travel arrangements, or insisting on chaperoning Jackson, would not have prevented the alleged abuse.

As discussed above, the Corporations' employees refusing to relay invitations or arrange travel at Jackson's request, or attempting to chaperone Jackson, would have made no functional difference: Jackson could have simply fired and replaced the

insubordinate employee or hired another person directly. (Pp. 61-62, *ante*.)

Moreover, providing administrative or household services—like relaying the invitation for the Robsons to meet at Record One—is far too remote from the alleged abuse to be its "proximate" cause. (*Shih v. Starbucks Corporation* (2020) 53 Cal.App.5th 1063, 1071 [events leading to spilled hot tea too remote from alleged cup defects]; *Wawanesa Mut. Ins. Co. v. Matlock* (1997) 60 Cal.App.4th 583, 588-589 [illegally giving minor cigarettes too attenuated from fire to be proximate cause].) On this point, too, Robson cannot prove legal causation.

V. Robson has shown no abuse of discretion—much less prejudicial error—in sustaining evidentiary objections.

Robson challenges the trial court's sustaining 14 evidentiary objections to police reports and statements that the Corporations' employees allegedly gave to police. (AOB 61, citing 7RAA:4167-4175; 9RAA 7230-7231.)

To support reversal, Robson must establish *both* that the trial court abused its discretion in excluding the evidence; *and* a reasonable probability that the trial court would have denied summary judgment but for the alleged error. (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 852, 857-858.) He makes *neither* showing.

First, Robson has not described the evidence in any detail. Without having done so, he necessarily cannot meet his burden of

showing either that the court abused its discretion or that the evidence would have made a difference.

Second, Robson *assumes* that the trial court sustained the objections solely on hearsay grounds, and attacks only that *assumed* ruling. (AOB 61.) But the Corporations' objections were on multiple grounds—including that the documents were not properly authenticated (as they were not)—and the trial court did not specify which grounds it adopted. (7RAA:4167-4175; 9RAA:7230-7231.) Because all intendments must be drawn in favor of the judgment (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564), the court presumably sustained the objections on *all* grounds, including authenticity. Robson's reliance on *Jane IL Doe v. Brightstar Residential Inc.* (2022) 76 Cal.App.5th 171, is therefore misplaced. There, defendant *did not* contest authenticity of the police report. (*Id.* at p. 179.) Because Robson has not challenged grounds other than hearsay, much less shown that sustaining on those other grounds was an abuse of discretion, he can show no error.

Third, Robson cannot show that excluding the evidence was prejudicial. Robson contends only that the witness statements provide "*further* evidence" that the Corporations knew of Jackson's alleged criminal proclivities. (AOB 62, italics added.) But the trial court did not grant summary judgment based on insufficient evidence of knowledge (9RAA:7225-7239); and none of the alternative grounds urged here turn on what notice the Corporations allegedly had. There is thus no reasonable probability that the evidence would change the outcome.

VI. The trial court did not abuse its discretion in granting protective orders as to discovery from non-parties, and Robson has shown no prejudice.

Robson argues that the judgment should be reversed because the trial court granted protective orders regarding four non-parties from whom Robson sought to obtain discovery. (AOB 63-74.) Robson's argument again fails for multiple reasons.

A. Factual overview.

Robson sought discovery from four non-parties about their or their family members' alleged childhood sexual abuse. Specifically, he sought to depose Lily Chandler (the half-sister of Jordan Chandler, the subject of the 1993 criminal investigation) and Tabitha Rose Marks (Jordan's ex-fiancée who first met him as an adult) about: Jordan's whereabouts; interactions with Jackson in the early 1990s; and interactions with the Chandler family. (AOB 64; 1RAA:362-381.) Robson sought to depose Jonathan Spence and his mother, Marion Fox, regarding Jackson's interactions with Spence based on Robson's unsubstantiated "belief" that Jackson abused Spence as a child. (2RAA:967-968; 4RAA:1871, 2101.)

All four non-parties sought protective orders. The trial court granted the motions in a detailed order that barred the depositions of Chandler and Marks; and limited the depositions of Fox and Spence to topics that did not implicate their constitutional rights to privacy "including, but not limited to their medical, psychotherapeutic, and sexual histories." (4RAA:2098-2105.)

Among other things, the court observed that it was "hard pressed to identify information that is more sensitive or private than childhood sexual abuse." (4RAA:2102.) It also noted that Marks declared under oath that she had no knowledge of what happened between Jordan and Jackson, nor of Jordan's whereabouts; and Lily declared that she has no specific memories of *any* interaction with Jackson or with Jackson's employees (she was six years old at the relevant time). (4RAA:2104-2105.)

B. Robson forfeited his right to appeal the protective orders by failing to serve his opening brief on the non-parties who obtained the orders.

Robson seeks to reverse the protective orders obtained by the non-parties. Yet, he did not serve his opening brief on any of them. (See AOB 88-89.) Two (Chandler and Marks) somehow learned of the appeal and filed a brief anyway. The other two (Spence and Fox) have not appeared; it is unclear whether they even know that Robson is challenging the orders.

Robson's failure to serve the opening brief on the four non-parties whose protective orders he seeks to reverse warrants dismissing this portion of the appeal. At a minimum, due process requires dismissing the appeal as to the orders protecting Spence and Fox, who have not appeared or filed a brief. (*Sanders v. Walsh* (2013) 219 Cal.App.4th 855, 875 [failure to serve opening brief on adversary constitutes abandonment of the appeal].)

C. The trial court properly balanced privacy rights against Robson's discovery needs.

Because the protective orders do not relate to the Corporations, we comment only briefly on the merits. But even a passing glimpse at the record demonstrates that there was no abuse of discretion.

Requests to depose non-parties about their or their relatives' alleged sexual abuse unquestionably implicate legally protected privacy interests. The burden, thus, shifted to Robson to demonstrate that "the invasion of privacy is justified because it substantively furthers one or more countervailing interests." (*County of Los Angeles v. Superior Court* (2021) 65 Cal.App.5th 621, 640.) He failed to do so, particularly given "the more limited scope of discovery available from nonparties." (*Id.* at p. 639.)

Robson does not contend that the non-parties have direct knowledge of his alleged abuse. (4RAA:2102, 2104-2105.) Nor has Robson shown that he was likely to obtain otherwise relevant and admissible evidence from them. Even if one of the would-be deponents testified that Jackson had abused another child—and there is *no reason* to believe that—Robson would also need to show that the abuse was connected to the Corporations in some way, which he never attempted to do. Barring that, such evidence would likely be impermissible character evidence and/or excludable under Evidence Code section 352. (4RAA:2102, 2105.)

D. Robson has not attempted to demonstrate that any error was prejudicial.

Even if the court had abused its discretion in granting protective orders, reversal would only be warranted if Robson met his burden to demonstrate *prejudice*—i.e., a reasonable probability that the depositions would have changed the outcome. (*Serri*, *supra*, 226 Cal.App.4th at pp. 857-858.) Robson does not contend that *any* of the non-party depositions were necessary to oppose summary judgment. Rather, he argues again that the depositions "could have supplied even further evidence that Defendants knew of the danger Jackson posed," and that *if summary judgment is reversed*, he will need the depositions to prepare for trial. (AOB 64.) But the summary judgment did not turn on the Corporations' knowledge, and the depositions' supposed usefulness *for trial* is no basis for reversal.

VII. The trial court correctly denied Robson's motion to renew the Whaley deposition, and sanctioned Robson's counsel.

Finally, Robson and his trial counsel (collectively for this Section VII, "Robson") challenge an order that (1) denied their motion to reopen the deposition of non-party Yoshi Whaley after Robson's counsel suspended it; and (2) imposed $9,200 in sanctions against Robson's counsel for failing to meet and confer in good faith and for filing an unwarranted discovery motion. (AOB 75-85; 4RAA:2093-2097; 6RAA:3077-3082 [imposing sanctions based on Code Civ. Proc., § 2025.420, subd. (h)].) Whaley is the son of Jolie Levine, one of Jackson's personal

assistants who left his employ in 1989 (8RAA:5950), before the Robsons ever visited California.

Discovery orders are reviewed for an abuse of discretion. (*People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1552.) A court abuses its discretion only if it "exceeded the bounds of reason." (*Ibid.*) When "there is a [legal] basis for the trial court's ruling and it is supported by the evidence, a reviewing court will not substitute its opinion for that of the trial court." (*Ibid.*, brackets in original)

The trial court did not abuse its discretion. It made extensive findings, supported by substantial evidence, that Robson's counsel, Mr. Finaldi, terminated the Whaley deposition without justification, including without attempting to meet and confer at the deposition and without preserving the right to renew it later pending a motion under section 2025.470; and that Robson's counsel later failed to meet and confer *in good faith* before moving for a protective order and sanctions. (1RAA:303-305; 2RAA:533-535; 4RAA:2093-2097; 6RAA:3077-3082.) The trial court was right. At the very least, it did not "exceed[] the bounds of all reason" by denying the motion and imposing modest sanctions for the unsuccessful motion.

In arguing otherwise, Robson misrepresents the record and the trial court's ruling. An accurate account makes clear that there was no abuse of discretion:

- Robson incorrectly claims that Whaley is a "critical witness," arguing that testimony from "other witnesses" suggests that Whaley was groomed by Jackson "for sexual abuse."

(AOB 75.) Robson ignores that Whaley testified that he was not abused, has never met Robson, and does not know who he is. (1RAA:247-248, 255-256. 277-278, 296-300.) Whaley therefore has little (if any) relevance to Robson's lawsuit, and Robson already deposed Whaley for approximately 1.5 hours regarding his distant memories of Jackson. (1RAA:207-308.) Robson has not identified *any* topics for a continued Whaley deposition that *were not already covered* during the first session.

- Robson relies on a transcription error or inadvertent misstatement in claiming that the trial court "agreed" that the Corporations' counsel Ms. MacIsaac coached the witness. (AOB 79, quoting 1RT:13.) It is clear from context that the court *did not agree* that she "was trying to coach the witness or trying to get in [Mr. Finaldi's] mind." (1RT:12-13; *see also* 4RAA:2093-2097; 1RT:17-18 [*disagreeing* with purported examples of coaching].) Having reviewed the entire deposition transcript "at least twice," the court expressly stated that Ms. MacIsaac's "transgressions were minor"; that there were "about 30 or 40 pages in a row where there wasn't a single objection made"; that Mr. Finaldi's reactions "were not in proportion to what was actually occurring"; and that suspension of the deposition to obtain a protective order was unwarranted. (1RT:12-13, 43; see also 4RAA:2097.) Robson ignores the findings that Mr. Finaldi acted improperly *at the Whaley deposition*, not just at prior depositions.

- Robson incorrectly states that the court denied his motion *solely* because his counsel failed to state that he was

suspending the deposition to seek a protective order. (AOB 81, 83.) Although counsel did fail to do that (4RAA:2097), that was *far from* the only basis of the ruling. The court denied Robson's motion on the totality of circumstances, including its findings that suspending the deposition was unwarranted; that Mr. Finaldi's reactions to Ms. MacIsaac's objections were "not even closely proportionate" and included unprofessional "name-calling"; that Mr. Finaldi rebuffed Ms. MacIsaac's offer to meet and confer *at the deposition*; and then failed to meet and confer in good faith before filing the motion. (4RAA:2093-2097.)

- Robson notes that his counsel met and conferred before filing the motion (AOB 79) but ignores the critical point that his counsel did not meet and confer "*in good faith*." (4RAA:2095, italics added.) Robson's counsel initiated a "meet and confer" by giving the Corporations less than 36 hours to respond to a unilateral demand. (1RAA:310.) When the Corporations' counsel responded by offering to reopen the deposition with a discovery referee (1RAA:313-317), Robson's counsel responded by accusing the Corporations' counsel of engaging in conduct "nearly as bad" as the "repeated[] rape" and "sexual[] abuse" of "many children." (2RAA:597). Accusing opposing counsel of conduct "nearly as bad" as serial pedophilia is not indicative of an effort to meet and confer *in good faith*. The Corporations nevertheless again offered to reopen the deposition with a discovery referee. Robson again refused. (2RAA:514, 599.) On that record, the finding that Robson failed to meet and confer *in good faith* was correct, and certainly no abuse of discretion.

- Robson insinuates that the trial court awarded sanctions because it found that Robson's counsel's conduct at prior depositions amounted to "gender incivility" and "gender bias." (AOB 82-84.) But the trial court *expressly* stated that the sanctions were *not* based on that. (4RAA:2096; 6RAA:3081; 1RT:25-30). It explained that it was addressing evidence of potential misconduct to ensure that everyone knew it was unacceptable and should not continue. (*Ibid.*)[15]

In short, the court's careful handling of the Whaley motion—and it attempt to get in front of any further inappropriate conduct from anyone—was commendable and far from an abuse of discretion.

[15] The trial court stated that "Plaintiff's counsel's statements made at other depositions regarding Ms. MacIsaac, including statements regarding her alleged lack of legal experience or ability as an attorney, belittling of her appearance ('red in the face'), making allegations regarding her emotional state and excessive breathing, and general dismissiveness will not be tolerated by the Court and could appear to indicate gender incivility. The Court is not considering this additional evidence for the purpose of this motion, but wants to identify and eliminate this potential issue immediately." (4RAA:2096.) The record speaks for itself; the court's comments were *fully* justified. (2RAA:522-524, 538, 550, 557, 560-561, 564-565, 623-624, 628-629.)

CONCLUSION

The judgment and other appealed orders should be affirmed.

Dated: December 8, 2022

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Respondents' Brief contains **17,979 words**, not including the tables of contents and authorities, the caption page, signature blocks, this Certification page, or the following attachment.

Date: December 8, 2022

s/ Jonathan P. Steinsapir

Jonathan P. Steinsapir

PROOF OF SERVICE

State Of California, County Of Los Angeles
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048.

On **December 8, 2022**, I served the foregoing document described as: **Respondents' Brief** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

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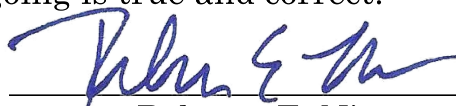
Executed on **December 8, 2022**, at Los Angeles, California.

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



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