2d Civ. No. B309450

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

JAMES SAFECHUCK,

Plaintiff and Appellant,

v.

MJJ PRODUCTIONS, INC. and
MJJ VENTURES, INC.

Defendants and Respondents.

Appeal from the Los Angeles Superior Court
Case No. BC 545264
The Hon. Mark A. Young

RESPONDENTS' BRIEF

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Court of Appeal
State of California
Second Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case No: B309450

Case Name: James Safechuck v. MJJ Productions, Inc. and MJJ Ventures, Inc.

Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. John Branca, in his capacities as Co-Executor of the Estate of Michael Jackson and Co-Trustee of the Michael Jackson Family Trust	Legal owner (with his co-executor and co-trustee) of all stock in both defendants
2. John McClain, in his capacities as Co-Executor of the Estate of Michael Jackson and Co-Trustee of the Michael Jackson Family Trust	Legal owner (with his co-executor and co-trustee) of all stock in both defendants
3. The Michael Jackson Family Trust	Sole beneficiary of the Estate of Michael Jackson and, by extension, beneficial owner of all stock in both defendants
4. Michael Joseph Jackson, Jr.	Beneficiary of the Michael Jackson Family Trust
5. Paris-Michael Katherine Jackson	Beneficiary of the Michael Jackson Family Trust
6. Prince Michael Jackson, II	Beneficiary of the Michael Jackson Family Trust
7. Katherine Jackson	Beneficiary of the Michael Jackson Family Trust

8. Office of the Attorney General for the State of California (Charitable Trusts Section)	The Michael Jackson Family Trust includes a devise to unnamed charities and, under the Probate Code, the Office of the Attorney General is therefore an interested person

/s/ Jonathan P. Steinsapir

Signature of Attorney/Party Submitting Form

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Parties Represented:	MJJ Productions, Inc. and MJJ Ventures, Inc., Respondents

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INTRODUCTION

This appeal is about when a corporation is liable for the alleged criminal conduct of its sole shareholder. The question is not new. A corporation is not liable for its agents' personal misconduct unrelated to the corporation's business. Nor do corporations owe a generalized duty to protect the world from their agents' misconduct. Rather, as the Supreme Court recently made clear, such duties exist only where the corporation has created or significantly increased the risk of harm, or when there is a "special relationship"—that is, where the corporation had the ability to control its agent's relevant conduct or to control the victim's welfare and means of protection.

Plaintiff James Safechuck alleges that Michael Jackson sexually abused him. Safechuck seeks to hold two corporations—both of which Jackson created and solely owned—liable for the alleged abuse.

As the trial court correctly recognized, plaintiff's claims violate principles governing when corporations are liable for the criminal misconduct of its agents. The corporations did not have a "special relationship," or much of a relationship at all, with Safechuck. Nor did they create or significantly increase the risk of harm to Safechuck. Rather, the complaint's allegations establish that the corporations had *no* role in how the Safechuck family's relationship with Jackson began, and *no meaningful involvement* in how it evolved.

Nor would the duties that Safechuck proposes materially reduce the risk of harm. Safechuck proposes that the

corporations' employees had a duty to defy directions from the corporations' owner, Jackson, to relay messages to Safechuck and his family, or to book and pay for their travel and accommodations. But that would have made no difference: Safechuck's alleges that Jackson also communicated directly with the Safechuck family; and Jackson obviously had the resources to pay for the Safechuck family's travel and accommodations without the corporations' involvement (as he also sometimes did, according to the complaint).

Jackson's access to Safechuck did not depend on the corporations as, say, an abusive teacher's access to children is dependent on his position as a teacher. The complaint explains that the Safechuck family trusted Jackson because of his fame. That fame did not depend on his position with the corporations. Had the corporations not existed, the alleged risk of harm would still have existed. The cases are clear that courts will not impose duties that would not meaningfully reduce the risk of harm.

Simply put, Safechuck's liability theories stretch the cases and governing legal principles far beyond their breaking point. If adopted, his theories would have far-reaching, unpredictable and impractical results. Yet all the while Safechuck's brief ignores the real reason his case cannot proceed: Michael Jackson passed away over a decade ago.

Were Jackson still alive today—or if Safechuck had complied with the Probate Code's creditors' claim scheme—there would be no need to argue about "duty," "special relationships," the *Rowland* factors, and the like. Safechuck could sue Jackson,

or his Estate, directly for sexual battery and similar claims. Such a case would be straightforward. A jury would be empaneled to resolve a credibility-contest and determine whom they believe. Safechuck tried to do exactly that here. But as the trial court held, Safechuck missed the deadline to sue the Estate by a wide margin. In response, he recast his claims in the garb of corporate negligence—none of the negligence or other causes of action were even alleged in the original complaint against the Estate and the corporations.

Safechuck's legal theories do not work. The true bar to Safechuck's case—if his claims have merit—is that Jackson is deceased and Safechuck missed the deadline to file a creditor's claim against his estate by many years.

The trial court got it right. Its judgment should be affirmed.

STATEMENT OF THE CASE

The Estate of Michael Jackson recognizes the seriousness of Safechuck's abuse allegations. Having thoroughly investigated them over the past seven years, the Estate is confident they are false. This brief nonetheless accepts them for purposes of argument, as it must, given the applicable standard of review. (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 538.)

A. Safechuck and his family forge a personal relationship with Michael Jackson.

Safechuck was born in 1978 and began working in television in the mid-1980s. (AA 11.) In late 1986 or early 1987, he acted in a Pepsi commercial starring Jackson. (*Ibid.*) There

are no allegations that this commercial had anything to do with respondents MJJ Productions or MJJ Ventures ("the Corporations") (it did not). After filming the commercial, Safechuck wrote Jackson a letter. Jackson thanked him and invited him to keep in touch. (*Ibid.*)

Sometime later, Jackson had his assistant, Jolie Levine, invite the Safechuck family to dinner at the Jackson family home in Encino. (AA 12.) Safechuck's parents accompanied Safechuck to dinner and stayed for a movie afterward. (*Ibid.*)

Shortly thereafter, Safechuck's parents suggested that Safechuck invite Jackson to their home for Thanksgiving. (AA 12.) Safechuck and his parents picked up Jackson at his home and brought him back to their home. (*Ibid.*)

Safechuck and his family visited Jackson's home, and vice versa, many more times. (AA 12-13.) By the second visit, Safechuck's parents were sufficiently comfortable with Jackson to leave Safechuck at Jackson's home while they went to dinner. (AA 12.) Jackson also began telephoning Safechuck frequently. (AA 13.) According to Safechuck, "[t]heir relationship had grown to a point where [Jackson] had become like a part of [Safechuck's] family." (*Ibid.*) Jackson would call Safechuck when Jackson was lonely, and Safechuck's family would pick Jackson up at his home and bring him to their home. (*Ibid.*) Safechuck and his family found "the entire experience of being with a 'star' with such celebrity status" to be "exciting." (*Ibid.*)

In 1988, Jackson invited Safechuck and his mother to a convention in Hawaii featuring the Pepsi commercial. (AA 13.)

Safechuck alleges that Jackson "and/or" respondents MJJ Productions and MJJ Ventures made travel arrangements and paid for travel and accommodations for the Safechucks. (*Ibid.*)[1] During the convention, Safechuck "spent a great deal of time with [Jackson] and got to know him well, and their friendship deepened." (AA 14.) On this trip, Jackson allegedly asked if Safechuck could sleep in his room, but Safechuck's mother "did not permit it." (*Ibid.*)

Also in 1988, Safechuck and his mother accompanied Jackson to New York for a Broadway show, where they spent time with Liza Minnelli and met performers. (AA 15.) Safechuck alleges that Jackson's "secretary/personal assistant" (AA 12) made the travel arrangements for the Safechuck family and that Jackson "and/or" MJJ Productions and MJJ Ventures (which, again, did not exist yet) paid for the travel and accommodations. (AA 15-16.) Jackson allegedly asked again that Safechuck stay in his room, but Safechuck's mother again refused. (AA 16.)

That same year, however, Jackson began sleeping over at the Safechuck family home. (AA 15.) From the first night that Jackson slept over, he and Safechuck stayed together in Safechuck's bedroom. (*Ibid.*) Safechuck alleges that his parents knew this happened regularly. (*Ibid.*)

When Jackson purchased the Neverland Valley Ranch in 1988, Safechuck was allegedly the first guest to stay overnight.

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[1] Although Safechuck's complaint attributes conduct to MJJ Ventures during the late 1980s (AA 12-13, 15-19), MJJ Ventures *did not exist at that time.* It was incorporated in 1991. (AA 185-187.)

(AA 20.) Whenever Safechuck visited Neverland, he allegedly slept in Jackson's bedroom. (*Ibid.*)

Jackson personally invited Safechuck to join him on the *Bad* Tour in 1988. (AA 16.) Safechuck and his mother spent six months touring with Jackson. (AA 16-19.) Safechuck was not compensated for his time on tour, but he claims that "[Jackson] and [MJJ Productions]" organized and paid for food, entertainment, hotel, and travel for Safechuck, his mother, and his father who joined his family for portions of the tour. (AA 17.)

After the tour, Safechuck continued to spend time with Jackson, becoming his "regular companion." (AA 24.) Jackson took Safechuck on frequent shopping excursions and spent time with him at Neverland and Jackson's apartments in Westwood and Century City. (*Ibid.*)

B. Safechuck alleges that he was abused in Jackson's homes and in Safechuck's home.

Safechuck alleges that Jackson first abused him during the *Bad* Tour in June 1988, and that the abuse continued through 1992. (AA 17, 19.) According to Safechuck, the abuse occurred during the tour in Jackson's hotel rooms, and after the tour at the Safechucks' home and at Jackson's homes. (AA 23-24.) There are no allegations that these homes were owned or controlled by the Corporations (they were not).

PROCEDURAL HISTORY

A. Safechuck sues the Estate and the Corporations five years after Jackson's death.

Jackson passed away on June 25, 2009. (AA 7.) Roughly five years later, Safechuck filed this action against Jackson (as "Doe 1") and respondents MJJ Productions and MJJ Ventures (as "Doe 2" and "Doe 3"). (Respondents' Appendix (RA) 4-6.)

The complaint contained one cause of action for "Childhood Sexual Abuse" against Jackson and the Corporations. (RA 5.) It did not, however, include any real allegations of wrongdoing against the Corporations except for a bare assertion that they were Jackson's "co-conspirators, alter egos, aiders, abettors and agents for the childhood sexual abuse alleged herein" and failed to take "reasonable steps" to prevent it. (RA 6, 25-30.)

B. The trial court holds that the Probate Code bars the belated claims against the Estate.

The Probate Code and Code of Civil Procedure impose firm deadlines on filing claims and suits for money damages against a decedent's estate based on the decedent's conduct. (Prob. Code, § 9351; Civ. Code, § 366.2, subd. (a).)

Safechuck missed those deadlines by at least four years. He therefore petitioned for leave to file a late creditor's claim against the Estate. (Appendix to Motion for Judicial Notice ("MJN Appendix") 3-32 [relying on Prob. Code, § 9103].) In 2015, the trial court (Judge Mitchell Beckloff) denied the petition, holding that "Safechuck waited an unreasonable period of time" to file it,

and that the Estate was not equitably estopped from enforcing the claims-filing deadlines. (MJN Appendix 103-105, 113-122.)

Safechuck never sought appellate review of that order dismissing his claims against the Estate, and the time to appeal has long since expired. The order is thus final.

C. The trial court gives Safechuck multiple opportunities to amend his complaint against the Corporations.

After dismissal of the claims against Jackson and his Estate, Safechuck focused on the Corporations alone.

First Amended Complaint. Safechuck filed a first amended complaint against the Corporations (RA 38-73), alleging that Jackson established MJJ Productions "as his primary business entity and the entity that held most or all of the copyrights to [Jackson's] music and videos." (RA 39.) He alleged MJJ Ventures was created "in part for the purpose of employing Plaintiff to work with [Jackson] on various projects." (RA 40.)

The first amended complaint did not rely on any common law duty. (RA 68-72.) Rather, Safechuck contended that Code of Civil Procedure section 340.1, subdivision (b)(2) ("section 340.1(b)(2)"), an extended statute of limitations for certain childhood sexual abuse claims, created statutory duties. (RA 68-72, 139-140.)

The trial court sustained the Corporations' ensuing demurrer, finding that section 340.1(b)(2) did not create a duty of care or any other substantive basis of liability. (RA 140.) The

court granted Safechuck leave to amend to articulate an independent duty or other basis for liability. (RA 140-141.)

Second Amended Complaint. Safechuck's second amended complaint alleged six causes of action against the Corporations: intentional infliction of emotional distress; negligence; negligent supervision; negligent retention/hiring; negligent failure to train, warn, or educate; and breach of fiduciary duty. (RA 143-193.) Safechuck alleged that Jackson was both Corporations' "president/owner" and that the Corporations were his "alter egos" and "alternative personality." (RA 144-147.)

The trial court again sustained a demurrer. (RA 197-204.) Focusing on Safechuck's admission that Jackson wholly owned the Corporations, the court found that the complaint failed to allege that the Corporations had any control over Jackson and his interactions with children, or any ability to take steps to prevent abuse. (*Ibid.*) The court also found that Safechuck's allegations did not establish: (1) that Safechuck had either a fiduciary or special relationship with the Corporations; (2) that anyone at the Corporations was "in a supervisorial position over" Jackson or ever hired or retained Jackson; or (3) that a managing agent knew that Jackson had allegedly molested children. (RA 199-204.) The court again granted Safechuck leave to amend. (RA 197; AA 40-44.)

Third Amended Complaint. The operative third amended complaint is largely identical to the prior iteration, with just a few new paragraphs. (Compare RA 176-178 with AA 40-44 [adding paragraphs 112(a)-(e), 114-116].) It again acknowledged

that Jackson was the "president/owner" of both Corporations and that they were his "alter egos." (AA 7-8.)

Safechuck conclusorily alleged that he had a special and fiduciary relationship with the Corporations because he was supposedly under their supervision, custody and control, and that they stood in loco parentis to him. (AA 36.) He added conclusory allegations that Jackson created the Corporations in part to "provide for the welfare and safety of minor children"; that the Corporations paid for travel and lodging for children; and that the Corporations' staff provided cleaning, transportation, and food for children who Jackson was mentoring. (AA 40-42.) Despite alleging that the Corporations were created in part to "provide for the welfare and safety of minor children," the complaint also alleged, inconsistently, that the Corporations were "likely the most sophisticated public child sexual abuse procurement and facilitation organization the world has known." (AA 8, 42.)

The complaint alleged that the Corporations "permitted" Jackson "to have solitary contact with" Safechuck and other minors. (AA 42.) It alleged that two employees of the Corporations, Jackson's personal assistants Jolie Levine and Norma Staikos, were responsible for supervising unnamed minors (but not Safechuck), and that they knew Jackson had a propensity for abusing minors. (AA 43-44.) It further alleged that Levine and Staikos had the authority to require minors around Jackson to be accompanied by their parents, to report Jackson to law enforcement or to require other employees to do so, and to create procedures limiting Jackson's access to minors. (AA 42-43.)

D. The trial court sustains the demurrer to the third amended complaint without leave to amend based on the then-applicable statute of limitations, which the Legislature then amends during the appeal.

The Corporations demurred to the third amended complaint, based largely on a (then applicable) statute of limitations extension in section 340.1(b)(2). The trial court sustained the demurrer and Safechuck appealed. After the appeal was fully briefed, the Governor signed a bill retroactively extending the statute of limitations for claims against third-party non-perpetrators involving childhood sexual assault. (Code Civ. Proc., § 340.1 as amended by Stats. 2019, ch. 861, § 1, eff. Jan. 1, 2020.)

The Corporations agreed that the basis for the trial court's judgment was no longer applicable, and this Court reversed based on the change in law. The Court declined to address the viability of the claims separate from the statute of limitations, "leav[ing] those issues to the trial court on remand." (*Safechuck v. MJJ Productions, Inc.* (2020) 43 Cal.App.5th 1094, 1100.)

E. The trial court sustains the Corporations' renewed demurrer without leave to amend.

On remand, the case was reassigned to Judge Mark Young, as Judge Beckloff had transferred departments. The Corporations renewed their demurrer on non-statute-of-limitations grounds.

The trial court issued a detailed tentative ruling indicating that it was inclined to dismiss all six causes of action. (AA 307-

316.) The tentative directed Safechuck to be prepared to argue whether the defects in certain causes of action could be remedied. (AA 310, 314-315.) At the hearing, Safechuck's counsel represented that Safechuck had no desire to amend his complaint again: "We've pled everything … we've had multiple chances to amend the complaint." Counsel acknowledged that "the Court has questioned whether there can potentially be more facts," but asserted definitively that "[t]he facts, the relevant facts, the important facts have been pled. They are in the complaint." (RT 11; see also RT 11, 13.)

After taking the matter under submission, the court sustained the demurrer without leave to amend. (AA 317-325.) The court's detailed written order held, among other things, that: (1) the negligence claims failed because the Corporations did not owe Safechuck the alleged duties of care; (2) the particular negligence claims also failed for independent reasons discussed below; (3) the fiduciary duty claim failed because Safechuck's allegations do not establish that the Corporations were his fiduciary; and (4) the intentional infliction claim failed because the Corporations cannot be held liable as direct perpetrators of acts of childhood sexual assault, and Safechuck otherwise failed to allege extreme or outrageous conduct *by the Corporations*. (*Ibid.*)

The trial court entered judgment for the Corporations. (AA 355.) This appeal followed.

STANDARD OF REVIEW

After the grant of a demurrer, this Court accepts the complaint's well-pleaded factual allegations and matters that may be judicially noticed, but not legal conclusions or factual allegations contrary to judicially noticeable facts. (*Stonehouse Homes*, *supra*, 167 Cal.App.4th at p. 538.) When a complaint's allegations are inconsistent, "specific allegations in a complaint control over an inconsistent general allegation." (*Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.App.4th 1228, 1236.)

ARGUMENT

I. Because the Corporations cannot be directly liable for the alleged abuse, Safechuck's claims must be based on the Corporations' acts or omissions independent of the alleged abuse.

Before turning to Safechuck's specific claims, we discuss background principles to frame the analysis.

A corporation can only act through natural persons, i.e., 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 it 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*.)

Under the doctrine of respondeat superior, corporations are vicariously liable for the torts of their employees committed within the course or scope of their employment. But Safechuck does not claim that any of Jackson's alleged criminal acts were performed in the course or scope of Jackson's alleged employment with the Corporations. (AA 130.) Nor could he: California courts "have consistently held that under the doctrine of respondeat superior, 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; see also *Quarry v. Doe I* (2012) 53 Cal.4th 945, 961, fn. 4.)

Safechuck's claims thus seek to hold the Corporations liable not for the alleged abuse as such, but based on a theory that the Corporations had a legal duty to protect Safechuck from Jackson's alleged criminal conduct, or that they otherwise committed a tort *independent of* Jackson's alleged conduct. As explained below, Safechuck cannot adequately plead any such theory.

II. Safechuck's negligence claims fail because his allegations do not establish that the Corporations owed a duty to protect him from Jackson.

The trial court correctly dismissed Safechuck's four negligence-based claims because the facts alleged by Safechuck, and judicially noticed by the court, do not give rise to a duty

requiring Jackson's wholly-owned companies to protect Safechuck from Jackson himself. (AA 346.)

"Whether a duty exists is a question of law to be resolved by the court." (*Brown*, *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.) Public policy provides that "responsibility for tortious acts should lie with the individual who commits those acts," and "absent facts which clearly give rise to a legal duty, that responsibility should not be shifted to a third party." (*Wise v. Superior Court* (1990) 222 Cal.App.3d 1008, 1015-1016.) This is true even when the "no-duty-to-protect" rule may "produce outcomes that appear '[m]orally questionable.'" (*Brown*, *supra*, 11 Cal.5th at pp. 214-215.)

The Supreme Court recently clarified that determining "whether a defendant has a legal duty to take action to protect [a] plaintiff from injuries caused by a third party" involves a two-step inquiry: (1) whether there is "a special relationship between the parties or some other set of circumstances giving rise to an affirmative duty to protect"; and (2) "if so," whether the *Rowland* policy factors "counsel limiting that duty." (*Brown, supra*, 11 Cal.5th at p. 209, referencing *Rowland v. Christian* (1968) 69 Cal.2d 108.)

Here, the trial court concluded that there was neither a special relationship between the parties, nor other circumstances giving rise to an affirmative duty to protect Safechuck from

Jackson. (AA 346-350.) The court's findings under the first step are dispositive and end the inquiry. There was no reason to proceed to the second step and evaluate the *Rowland* factors, because there was no potential duty in the first place.[2]

A. Section 1714 does not impose a duty absent a special relationship.

Safechuck first argues that this Court need not address the special relationship issue at all because there are "other … circumstances giving rise to an affirmative duty to protect." (*Brown, supra,* 11 Cal.5th at p. 209.) In particular, Safechuck points to Civil Code section 1714, which creates a duty to use reasonable care to avoid injuring another. His reliance is misplaced.

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

Section 1714 "imposes a general duty of care on a defendant *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*,

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[2] Although the trial court did not conduct a detailed *Rowland* analysis, the court expressly rejected Safechuck's argument that the *Rowland* factors imposed a duty. (AA 324-325.) The trial court was right: *Rowland* is not a "freestanding means of establishing duty," but instead provides a "means for deciding whether to limit a duty derived from other sources." (*Brown*, *supra*, 11 Cal.5th at p. 217.) Moreover, as discussed *post* (§ II.C.), *Rowland* does not support Safechuck's proffered duties here and thus provides an independent basis to affirm.

supra, 11 Cal.5th at p. 214, internal quotation marks omitted, italics added.)

Consistent with this standard, numerous courts have held that, absent a special relationship, no duty to protect arose where the defendant did not create or increase the risk of harm ("nonfeasance" cases).[3] For example:

- In *Minch v. Department of California Highway Patrol* (2006) 140 Cal.App.4th 895, police officers had no duty to protect a tow-truck operator struck by a negligent driver on the shoulder of the road because they did not create or significantly increase the risk of being struck, *even though* they summoned the operator to the accident scene and made efforts to slow nearby traffic, but did not direct him where to park. (*Id.* at pp. 898-907.)

- In *Sakiyama v. AMF Bowling Center, Inc.* (2003) 110 Cal.App.4th 398, the owner of a facility that hosted an all-night "rave" had no duty to attendees injured or killed in car crash after they foreseeably stayed up all night taking drugs at the rave; hosting a party "does not equate with an unreasonable risk of harm." (*Id.* at pp. 402-409.)

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[3] In *Brown*, 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, internal citations and quotation marks omitted.) In this brief, we use the terms "misfeasance" and "nonfeasance" as shorthand for whether or not a defendant's conduct created or substantially increased the risk of harm.

- In *Melton v. Boustred* (2010) 183 Cal.App.4th 521, a defendant who posted an open invitation to his house party had no duty to protect guests from attacks by third parties, because he did not create the risk that they would be attacked upon arrival. (*Id.* at pp. 527-535.)

As these cases show, 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*, *supra*, 11 Cal.5th at p. 214, fn. 5.)

By contrast, in cases where courts *have* imposed a duty under Section 1714, the *defendant's conduct created an* ***inherently dangerous*** *condition independent of the actions of the third-party that inflicted the harm played a meaningful part in creating the harm* ("misfeasance" cases). Safechuck's cited cases fall into this category:

- In *Lugtu v. Cal. Highway Patrol* (2001) 26 Cal.4th 703, the Court held that a police officer had a duty to protect a driver who the officer directed *to stop in the center median of the freeway*, where the driver was later struck. (*Id.* at pp. 716-717.) A duty arose absent a special relationship because "the defendant [wa]s responsible for making the plaintiff's position worse, i.e., defendant has created a risk." (*Id.* at p. 716.)
- *Weirum v. RKO Gen., Inc.* (1975) 15 Cal.3d 40, imposed a duty on a radio station, absent a special

relationship, finding that it created the risk of harm by holding a contest encouraging teenagers to engage in a "high speed automobile chase" to be the first to locate a DJ hiding at various locations revealed throughout the day. (*Id.* at pp. 47-49.)

- *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, held that employers have a duty to protect their employees' household members from asbestos fibers embedded in employee's clothing at work; the employee's role in bringing fibers home derived from *employer's* failure to control or limit workplace exposure.

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

The cases just discussed establish that the Corporations owed Safechuck no duty. The alleged harm to Safechuck was supposed molestation by Jackson. The Corporations did not create Michael Jackson. The Corporations did not create Jackson's fame, which existed long before the Corporations existed. The Corporations did not create Jackson's *alleged* criminal proclivities.

Safechuck's own allegations dispel any notion that the Corporations played a meaningful role in bringing Jackson and Safechuck together. (AA 11-13.) Safechuck alleges that he met Jackson while working on a Pepsi commercial featuring Jackson. (AA 11.) There are no allegations that this commercial, which Jackson was in due to his immense personal fame, had anything to do with the Corporations (it did not).

Safechuck reached out to Jackson after the commercial was filmed, and Jackson responded with his own letter. (AA 11.) Jackson then invited the Safechuck family to his home, through his assistant. (AA 12.) In short order, Safechuck claims that Jackson became "like a part of [his] family." (AA 13.) Jackson spent Thanksgiving at the Safechucks' home. (AA 12.) They talked frequently on the phone and visited each other's homes. (AA 13.)

Other than the fleeting involvement of Jackson's assistant relaying an invitation for Jackson, the creation and development of Jackson and Safechuck's relationship had nothing to do with the Corporations. And merely relaying an invitation cannot be the basis for imposing a duty: Cases against third parties like schools, churches, daycares, and youth organizations—which, quite obviously, play *the key role* in introducing victims to abusers—consistently analyze whether a duty arises from a special relationship, *not* under Section 1714. (See, e.g., *Doe v. U.S. Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1128-1140; *Conti*, *supra*, 235 Cal.App.4th at pp. 1226-1228.) Absent a special relationship, imposing a duty on everyone who makes an introduction would inject potential liability into countless everyday interactions and turn the no-duty-to-protect rule on its head.

Nor does the Corporations' alleged conduct *after* Jackson became like "family" to the Safechucks give rise to a duty to protect absent a special relationship. Safechuck alleges that Jackson "and/or" the Corporations paid for the Safechucks' travel,

entertainment, and accommodations. (AA 12-17.) Doing so did not create an inherently dangerous condition *independent of* Jackson's alleged criminal tendencies, as required for a duty to arise absent a special relationship. (*Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 717-720, 726-727 [convicted serial pedophile's "mere presence" on his family's property is not a dangerous property condition triggering premises liability, even though family knew he was likely to relapse in the future and let him stay on property with a child].) At best, the Corporations may "have [had] greater involvement in the plaintiff's activities than a chance spectator yet [they still] play[ed] no meaningful part in exposing the plaintiff to harm." (*Brown*, *supra*, 11 Cal.5th at p. 214, fn. 5.)

The Corporations' conduct is not comparable to situations where courts have found that a defendant created or significantly increased the risk of harm, as may trigger a duty absent a special relationship. The Corporations' conduct is not akin to ordering plaintiff to stop in the middle of a freeway (*Lugtu, supra*, 26 Cal.4th 703), which is inherently dangerous independent of a third-party driver's apparent negligence in striking plaintiff. Nor is it akin to encouraging teenagers to be the first to find a DJ hiding out in locations throughout Los Angeles (*Weirum, supra*, 15 Cal.3d 40), conduct which is inherently dangerous independent of the driving skills of any particular teenage listener. The radio station's conduct effectively encouraged teenagers to drive negligently.

Indeed, the Corporations' conduct here is far *less* "risk-creating" or "risk-increasing" than summoning a tow-truck driver to an accident scene without directing him where to park (*Minch, supra*, 140 Cal.App.4th 895); hosting an all-night rave knowing that teenagers would do drugs (*Sakiyama, supra*, 110 Cal.App.4th 895); or hosting a house party knowing that people would drink and potentially become violent (*Melton, supra*, 183 Cal.App.4th 521). And in those latter three cases—*Minch*, *Sakiyama*, and *Melton*—courts *found no duty*, holding that the defendants did *not* create or significantly increase the risk of harm.[4]

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[4] Safechuck's reliance on *Pamela L. v. Farmer* (1980) 112 Cal.App.3d 206 is also misplaced. There, minors were molested after a wife invited them to her swimming pool while only her husband, a convicted sex offender, was home. (*Id.* at p. 208.) The Court found that the wife owed a duty to the plaintiffs based on *both* the wife's "misfeasance" *and* a special relationship. (*Id.* at pp. 210-212.) The Court explained that the wife's conduct increased the risk of harm by encouraging the children to come to her home while assuring their parents that they would be safe. (*Id.* at p. 210.) *Pamela L.* is distinguishable for several reasons. First, the plaintiffs in *Pamela L.* would *not* have been exposed to the husband but for the wife's conduct, whereas Safechuck met Jackson through a Pepsi commercial (not involving the Corporations) and his family befriended Jackson without meaningful involvement by the Corporations. (AA 11-13.) Second, the wife in *Pamela L.* invited plaintiffs to *her home* where *she* could control the environment; no one invited Safechuck to premises under the Corporations' control. Third, while the wife in *Pamela L.* knew of her husband's past convictions but still assured the parents that plaintiffs would be safe, Safechuck does not allege that Jackson was a convicted sex offender (he had never even been investigated at this time), or

The risk of harm here was from Jackson's alleged criminal proclivities. Had the Corporations *not* engaged in the few activities they supposedly engaged in, the alleged molestation *would still have occurred*. Jackson could personally invite Safechuck—instead of using his assistants—as he apparently did on many occasions. (AA 13, 16.) And as one of the biggest stars in the world, Jackson obviously had resources other than those available through the Corporations to pay for the Safechucks' travel and accommodations, as Jackson also apparently did on many occasions. (AA 13, 15-16, 25 [repeatedly alleging that Jackson "and/or" the Corporations paid for travel, accommodations, etc.].)

Simply put, even if the Corporations had not engaged in the allegedly risk-creating or risk-increasing conduct, that would not have prevented the harm. (*K.G. v. S.B.* (2020) 46 Cal.App.5th 625, 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"].) It thus follows that the Corporations' alleged conduct could not have created or increased the risk of harm when that conduct did not affect whether the harm would have occurred in the first place. Accordingly, no duty arises absent a special relationship.[5]

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that any Corporations' employee made invitations to Safechuck coupled with assurances of safety to his parents.

[5] Safechuck focuses on the foreseeability in arguing that the Corporations owed an affirmative duty to protect him. But foreseeability is not relevant to the first step of the duty inquiry; it is only relevant to the second step, the *Rowland* analysis. (E.g.,

3. Safechuck's interpretation of what creates a duty to protect, absent a special relationship, would have sweeping negative consequences.

Safechuck's arguments respecting what constitutes risk-creating or sufficiently risk-increasing behavior to create a duty to protect *absent a special relationship* would likely lead to sweeping negative consequences.

The supposedly risk-creating and risk-increasing conduct here consists of making appointments, and booking, making, and paying for travel arrangements and accommodations, *all after* Jackson and Safechuck had an existing relationship. The Corporations essentially acted as Jackson's sometime-travel agency and sometime-communication service. This was supposedly risk-creating or risk-increasing because the people engaging in such tasks allegedly suspected, or should have reasonably suspected, Jackson's alleged criminal proclivities.

But absent a special relationship, imposing an affirmative duty *to refrain from communicating, making introductions and making appointments* with certain people altogether based on potentially foreseeable harm that might result would be

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Kesner, *supra*, 1 Cal.5th at pp. 1142-1148.) Moreover, when analyzing foreseeability in the context of the *Rowland* factors, 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 a third party's criminal acts. (*Wiener v. Southcoast Childcare Centers Inc.* (2004) 32 Cal.4th 1138, 1149-1150.)

problematic, further isolating various already-marginalized segments of the population.

The problem is apparent given what Safechuck alleges would constitute the circumstances making misconduct "foreseeable." Specifically, this would *not* be governed by an easily understood, objective criterion like a prior conviction or judgment *or even* a prior or current investigation or lawsuit (as none of these criteria would be applicable to Jackson in the pertinent timeframe). It would instead be judged in hindsight based on an amalgam of factors and circumstances that a plaintiff would later contend should have alerted defendants. The prudent business seeking to avoid potentially ruinous liability would likely choose to do *no business at all* with anyone who they think is "creepy" or "aggressive" and could *possibly* be engaging in malfeasance.

This would put businesses in impossible situations where they run the risk of being sued by potential abuse victims for serving customers; *but also* run the risk of being sued by the persons being denied services, with those persons claiming discrimination based on some immutable characteristic, arguing that any supposed "suspicion" is pretext for discrimination. (E.g., *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 736, 741 [horse-racing park unlawfully discriminated, under Civil Code section 51, against patron "reputed" to have past gambling convictions who was seen speaking with others with criminal records: "mere suspicion based on past conduct and alleged reputed activities off the course, or on conversations without

disclosure of their substance" was insufficient to justify barring patron].)

California law should not impose these extraordinary duties without, at the very least, (1) careful legislative study of the impact they would have on particular groups and businesses, and (2) a definition of what specific criteria trigger these duties (and potentially concomitant immunities from suit by alleged wrongdoers when the requisite criteria are met, similar to the mandatory reporter statutes, e.g., Penal Code section 11172).

Regardless of whether a legislative regime could or should impose such duties, California courts have never held that such seemingly ordinary conduct is "misfeasance" (i.e., creates or increases the risk of harm) for purposes of negligence law.

B. The Corporations did not have a special relationship with Jackson or Safechuck that would create a duty to protect Safechuck.

The trial court correctly found that the Corporations did not have a special relationship with Jackson or Safechuck giving rise to an affirmative duty to protect Safechuck. (AA 344-347.)

1. No duty to Safechuck arose from the Corporations' relationship with Jackson.

Courts have uniformly found that a duty does not arise from a relationship between the defendant and the alleged perpetrator unless the defendant can control the alleged perpetrator. "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.*, *supra*, 46 Cal.App.5th at p. 631, italics

added and quoting *Smith v. Freund* (2011) 192 Cal.App.4th 466, 473.)[6]

Safechuck's allegations, and undisputed facts subject to judicial notice, establish that the Corporations had no ability to control Jackson. Jackson was the Corporations' founder and sole shareholder. (AA 7-9, 170, 178.) Safechuck does not seriously dispute the trial court's finding that as a matter of corporate law, the Corporations had no ability to control Jackson, and therefore no special relationship with him. (AOB 37-42.) Instead, Safechuck contends that control over the individual causing harm is not dispositive of duty, because a special relationship may exist where the defendant has control over *plaintiff's* welfare. (AOB 41.) As discussed below, there was no special relationship by that measure either. (§ II.B.2., *post*.)

Safechuck cannot challenge the trial court's lack-of-control finding for the first time in reply. (*Martinez v. State Dept. of Health Care Services* (2017) 19 Cal.App.5th 370, 375.) In any event, that challenge would lack merit. A corporation is controlled by its Board. (Corp. Code, § 300.) The Board is controlled by the shareholders. When there is only one

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[6] See also, e.g., *Barenborg v. Sigma Alpha Epsilon* Fraternity (2019) 33 Cal.App.5th 70, 79 [no duty where national fraternities have no ability to monitor local members]; *Todd v. Dow* (1993) 19 Cal.App.4th 253, 256, 259 [parent-child relationship did not give rise to duty where parents had no ability to control adult son who took gun from parents' home and shot someone]; *Wise*, *supra*, 222 Cal.App.3d at pp. 1012, 1014 [no duty where wife had no ability to control husband, a "human time bomb"].

shareholder (here, Jackson), that shareholder necessarily has complete control, because the Board is elected with "consent of all shares." (*Id.* § 603, subd. (d).) The sole shareholder has the authority to hire or fire Board members at any time without cause. (*Id.* § 303, subd. (a).) The sole shareholder also controls a corporation's officers, through control of the Board. (*Id.* § 312, subd. (b).)

Given these basic tenets of corporate law, the trial court correctly found that the Corporations had *no ability* to control Jackson, and thus, no duty to protect Safechuck from Jackson's alleged misconduct. (AA 346-347.)

Tarasoff v. Regents of Univ. of California (1976) 17 Cal.3d 425 is not to the contrary. Safechuck argues that under *Tarasoff*, medical professionals who learn that a patient poses an immediate threat of harm may have a duty to reduce the risk, even "absent actual control over the patient." (AOB 42.) But *Tarasoff* did not excuse the special relationship requirement—it concluded categorically that a special relationship "arises between a patient and his doctor or psychotherapist." (17 Cal.3d at p. 436.) There is no doctor-patient relationship here. Moreover, more recent Supreme Court decisions make clear that the ability to control is *the touchstone* for finding a special relationship between defendant and a third-party wrongdoer. (E.g., *Brown, supra*, 11 Cal.5th at p. 216 ["a special relationship between the defendant and the dangerous third party is one that 'entails an ability to control [the third party's] conduct'"].) That ability is

lacking here. The trial court's conclusion was correct. (AA 344-347.)

2. No duty arose from the relationship between the Corporations and Safechuck.

Safechuck argues that the trial court failed to consider whether *he* had a special relationship with the Corporations. (AOB 40.) Safechuck is wrong. The trial court analyzed that argument, and correctly rejected it. (AA 344, 346.) Even if it had not, this Court reviews the trial court's result, not its reasoning, and must affirm if the judgment is correct on any theory. (*Morales v. 22nd District Agricultural Association* (2018) 25 Cal.App.5th 85, 93.) Here, Safechuck has no special relationship with the Corporations giving rise to a duty to protect him from Jackson.

The necessary dependence and control are lacking.

The Supreme Court has confirmed that control is also required for a duty to arise from a relationship between *the defendant and the alleged victim*—namely, an ability to control a means of protection. (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619-621 (*Regents*).) As the Court explained, a special relationship entails "an aspect of dependency in which one party relies to some degree on the other for protection," and "[t]he corollary of dependence in a special relationship is control. Whereas one party is dependent, the other has superior control over the means of protection." (*Id.* at pp. 620-621.)

Safechuck has not alleged facts establishing that he was entitled to rely on the Corporations for protection and that the

Corporations had sufficient control over him to provide that protection. Safechuck was not dependent on the Corporations for protection from Jackson, regardless of the fact that Jackson may have sometimes directed an employee of the Corporations to invite Safechuck and his family somewhere or pay and arrange for travel. Nor was there any basis for Safechuck or his family to rely on the Corporations—entities established *by Jackson* to conduct *Jackson's business* (AA 7-8)—for protection *from Jackson himself*. In any event, because Jackson had complete control over the Corporations (§ II.B.1, *ante*), the Corporations had *no ability* to protect Safechuck from Jackson.[7]

Safechuck was not an employee. In support of his argument that the Corporations owed him a duty as their employee, Safechuck points to a single allegation "on information and belief" that "at all relevant times," he performed "various work" for the Corporations with his "compensation" being unspecified "travel, lodging, food, medical care, and clothing and/or wardrobe." (AA 11 ¶11.)

Safechuck's specific factual allegations belie this conclusory allegation. The complaint spells out in detail that Safechuck and his family developed a *personal* relationship with Jackson under circumstances having almost nothing to do with the Corporations—and certainly nothing resembling an *employment*

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[7] To the extent that Safechuck alleges a duty to warn, independent of a lack of control—even though his parents knew Jackson and Safechuck allegedly slept in the same room—the issue is discussed separately below (§ III.C., *post*) in the context of his specific negligence claim asserting a failure to warn.

relationship. (AA 11-21.) The complaint alleges that Safechuck and his family socialized with, and then traveled with, Jackson—who became like part of their "family"—as part of a personal relationship. (*Ibid.*) There are no allegations that the Corporations (or Jackson for that matter) dictated when and where Safechuck had to "work" in exchange for "compensation" or that compensation was exchanged for that "work." Employees are not typically paid with random provisions of travel, lodging, and the like.

There are no facts alleged that would otherwise support the contention that Plaintiff was an employee between 1988 and 1992. Indeed, the complaint alleges that Safechuck was hired by the Corporations to work on videos in 1994 and 1995, *long after* the abuse allegedly ended. (AA 27.) These specific allegations do not accord with the boilerplate allegation that Safechuck was employed by the Corporations at "all relevant times." (AA 11.) The boilerplate allegation also makes no sense: It is undisputed—and judicially-noticed—that MJJ Ventures did not even exist until 1991 (AA 185-187, 342-343; RT 13), at the end of the period of alleged abuse so it could not have possibly employed Safechuck "at all relevant times."

At bottom, the boilerplate allegation that Safechuck was an employee is no more than a legal contention that there was a special relationship.[8] It should be disregarded both on that basis

[8] Indeed, earlier versions of the complaint did *not* include the boilerplate "employee" allegation; they alleged only that the Corporations employed Safechuck in 1995, which is after

and as inconsistent with more specific, factual allegations. (*Stonehouse Homes*, *supra*, 167 Cal.App.4th at p. 538 [not bound by complaint's "deductions, contentions, or conclusions of law or fact"]; *Stowe v. Fritzie Hotels* (1955) 44 Cal.2d 416, 422 [when there is "inconsistency between the specific allegations upon which a conclusion must be based and the conclusion, the specific allegations control"].)

Employment generally does not create a special relationship imposing the duties Safechuck claims. Safechuck's failure to provide any details about his supposed "employment" further dooms his argument for another reason. Safechuck has not cited any case holding that a special relationship arises out of the mere fact of an employment relationship—or that any duty arising from such a relationship extends *outside the scope of employment*. Without alleging what his supposed "employment" involved, the Court cannot analyze whether the duties he asserts relate to that "employment."

Special relationships "have defined boundaries"; they do not create limitless duties. (*Regents, supra*, 4 Cal.5th at p. 621.) For example, although the college-student relationship "fits within the paradigm of a special relationship[,]" "universities are not charged with a broad duty to prevent violence against their students." (*Id.* at pp. 625, 633.) Rather, the duty arising from the

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Safechuck alleges the abuse stopped. (RA 21, 58.) Safechuck added the boilerplate allegation that he was an employee "at all relevant times" only *after* the trial court sustained a demurrer to the first amended complaint because plaintiff had not alleged duty by the Corporations. (RA 140, 148.)

special relationship between college and student is limited to activities "tied to the school's curriculum" and does not extend to "student behavior over which the university has no significant degree of control." (*Id.* at p. 627.)

Because Safechuck has failed to allege what his supposed "employment" between 1988 and 1992 entailed, he cannot articulate how the duties he asserts are within the "defined limits" of any supposed special relationship arising from employment. An employer has no duty to protect its employees from criminal conduct that purportedly occurred in private residences outside the scope of the job, and unrelated to job functions. (*Federico v. Superior Court* (1997) 59 Cal.App.4th 1207, 1216 [even if it were foreseeable that employee/hairstylist with pedophilia convictions would molest minors he met on the job, there was no duty to protect because 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"].)

Safechuck was not in the Corporations' custody, nor did they act in loco parentis. As the trial court correctly found, Safechuck's "in loco parentis" allegations (AA 36, 40-41) are legal conclusions not binding on demurrer. (AA 344.) And, as the court also found, Safechuck "has not alleged any facts demonstrating that [the Corporations] had a duty to control the conduct of [Safechuck] as a parent would." (*Ibid.*)

Safechuck's *specific*, *factual* allegations establish that he and his family developed a personal relationship with *Jackson*

before the Corporations meaningfully entered the picture, that Jackson and Safechuck frequently visited each other's homes without the Corporations' involvement, that Safechuck generally traveled with his parents, and that his parents were fully aware of the time he spent alone with Jackson including allegedly sleeping in the same room. (AA 11-17.) Safechuck was not in the Corporations' custody when the abuse allegedly occurred in *Jackson's* private homes (not the Corporations'), in *Jackson's* hotel rooms (not the Corporations'), and *in Safechuck's own home.* (AA 23-24.)

At best, Safechuck's parents placed him in the care of *Jackson personally*—not the Corporations. And on essentially *every occasion* that Safechuck alleges he was abused, his parents were there with him and even knew that he was allegedly sleeping in the same room as Jackson. (AA 15 ["[Jackson] ended up sleeping in Plaintiff's bedroom with him on a regular basis, which Plaintiff's parents knew"]; AA 12-17.)

Cases involving schools, churches, and youth organizations are inapposite. Equally unavailing is Safechuck's reliance on decisions finding that schools, churches, and youth organizations have a special relationship with the children in their care, giving rise to a duty to protect them from alleged abuse by teachers, priests, coaches, etc. (AOB 38-40.)

The Safechucks did not rely on and trust Jackson *because* he was associated with the Corporations as parents rely on a priest *because* of his relationship with the church. Rather, they relied on and trusted Jackson because of his *personal* fame and

the *personal* relationship they formed with him, all of which had nothing to do with the Corporations. (AA 13.) This is very different from how and why a child and family may rely on and come to trust a priest or teacher, i.e., they trust priest or teacher *because* they are imbued with the authority of church or school, which implicitly vouch for their fitness to work with children.

In any event, in *all* the cases Safechuck cites, the organizational defendants had the ability to exercise control over the welfare of the child in their care *by exercising control over the alleged perpetrator*.[9] That is not true here. (§ II.B.1., *ante*.) The Corporations had *no control* over Safechuck's welfare with respect to harm allegedly inflicted by Jackson, their sole shareholder, in the privacy of Jackson's and Safechuck's homes.

C. The *Rowland* factors do not support imposing a duty on a corporation to police its sole shareholder's personal conduct.

Because the Corporations had no affirmative duty to protect Safechuck, the Court need not move to the second step of the analysis, whether the *Rowland* factors counsel limiting that

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[9] Notably, in *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1101-1103, the Court of Appeal rejected the plaintiffs' claim that they had a special relationship with one of the defendants—the United States Olympic Committee—creating a duty to protect them from their coach, partly because the plaintiffs did not allege facts establishing that "USOC had the ability to control [the coach's] conduct or was in the best position to do so." (*Id.* at p. 1103.) The Supreme Court did not disturb that aspect of the Court of Appeal's ruling. (*Brown*, *supra*, 11 Cal.5th at p. 222.)

duty. But even if the first step were met, public policy concerns counsel against imposing a duty here where the alleged perpetrator completely controlled the defendant entities.

The *Rowland* factors include: "'[1] the foreseeability of the 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.)[10]

The factors are a guide for the policy analysis in determining whether to impose a duty in a given case. The court does not "merely count up the factors on either side." (*Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077, 1092.) Rather, the factors are a guide for the public policy analysis in determining whether to impose a duty in a given case.

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[10] Safechuck asserts that the Corporations did not argue that the *Rowland* factors limit the duty owed in this case. (AOB 43.) But the Corporations did raise numerous public policy concerns relevant to a *Rowland* analysis. (AA 84, 280-282.) Regardless, an order sustaining a demurrer may be affirmed on any ground apparent in the record, whether or not it was raised below. (*Zubrun v. Univ. of S. Cal.* (1972) 25 Cal.App.3d 1, 8-9.)

1. Safechuck does not specify what duties he would impose on the Corporations.

The *Rowland* analysis requires the court to first "identify 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 of the risks and burdens present in a given case to determine whether the specific obligations should or should not be imposed.'" (*Ibid.*, italics added.)

In *Youth Soccer, supra*, 8 Cal.App.5th 1118, for example, after finding a special relationship, the court found that the *Rowland* factors weighed in favor of a duty on youth soccer organizations to conduct criminal background checks on potential coaches, but weighed against a duty to warn, train, and educate youth soccer players and their families about childhood sexual abuse. (*Id.* at pp. 1131-1139.)

Safechuck's *Rowland* discussion skips this first step. It relies on generalizations, without articulating what *specific* actions the Corporations should have taken, or the practicality of imposing such a duty given Jackson's status as the Corporations' sole shareholder. (AOB 43-48.) Safechuck contends that "precisely what steps may or may not be appropriate in light of the relationship between Defendants, Jackson and Plaintiff" is irrelevant to the duty analysis. (AOB 48.)

Safechuck is wrong. It is not for this Court to conjure up what "specific action or actions [Safechuck] claims the

[Corporations] had a duty to undertake." (*Castaneda*, *supra*, 41 Cal.4th at p. 1214.) That was Safechuck's burden. His failure to do so speaks volumes, particularly given that the Corporations have been pointing to this exact problem with his general negligence claim for years. (RA 80-81.)[11]

2. Regardless, the *Rowland* factors do not support imposing a duty on a corporation to police its sole shareholder's personal conduct.

Jackson's status as the Corporations' creator and sole shareholder means that imposing a duty on the Corporations to police or control Jackson's conduct would be futile. As a result, the burdens of imposing such a duty would be high and the benefits—in terms of preventing future harm or allocating costs—would be non-existent or *de minimis* at best. (See *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"].)

For example, Safechuck suggests that the Court should impose a duty to limit Jackson's time alone with children. (AOB 45.) But Safechuck never explains *what*, specifically, the

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[11] The more specific negligence claims (negligence per se, negligent hiring, negligent supervision, negligent failure to train, warn, etc.), as opposed to the free-floating general negligence claim, all implicitly include the action or actions that Safechuck contends should have been taken or not taken by the Corporations. We address below why there was no duty to take those specific actions. (§ III., *post*.).

Corporations could have done to limit Jackson's contact with children.

Since the Corporations had no control over their sole shareholder, presumably Safechuck is suggesting that lower-level employees should have defied Jackson's instructions to extend invitations, arrange travel, or pay for accommodations for Safechuck and his family. But the Corporations' alleged conduct—extending invitations, arranging accommodations, and paying travel expenses for Safechuck *and his family* (AA 12-13, 15-17)—did *not* allow Jackson to be with children *unsupervised.* To the extent Safechuck spent time with Jackson *without supervision*, it was because *Safechuck's parents*—not the Corporations' employees—permitted that.

Even setting that glaring problem aside, there are several other issues with that argument.

- Imposing a duty requiring corporate employees to defy superiors' instructions would create an intolerable conflict with basic tenets of corporate hierarchy.

- A duty to defy would put lower-level employees in the untenable position of trying to determine when *suspicions* about their boss require insubordination. This would require trying to weigh the employee's level of suspicion against the potential consequences of following any given instruction. How certain must an employee be that her boss poses a threat before she refuses to book travel for a child and his parents? As noted above, Safechuck *cannot* rely on

objective criteria like prior convictions or judgments or even a prior or current investigations.

- Refusing to follow a superior's instructions would likely entail a public airing of why, i.e., that the employee suspects that the superior is a pedophile. But this would expose the employee to defamation liability. (See *Cuff v. Grossmont Union High School Dist.* (2013) 221 Cal.App.4th 582, 584-585, 591 [reversing dismissal of defamation action where school counselor provided boys' father with report that mother was abusing them; although counselor was a mandated reporter, she had no immunity because report was to parent, not law enforcement].) And under Safechuck's rule, the employee would *also* be exposed to liability for *following* a superior's instructions (i.e., for the Corporations to be vicariously liable, the employee must first be directly liable). Thus, an employee is again in an impossible position: she can be sued for defamation if she makes accusations against a superior; and she can be sued for negligence if she does not.

- Any duty to defy instructions would not prevent future harm, because employees would likely be immediately fired for insubordination and for accusing the boss of the most heinous crimes imaginable. They then would be replaced by someone more pliable.

- Relatedly, it is unlikely that imposing a duty (and potential liability) on *corporate entities* controlled by the alleged perpetrator would incentivize *employees* to take

insubordinate actions that would result in the termination of their employment.

For all these reasons, the burdens and consequences of imposing a duty on the Corporations to limit Jackson's unsupervised visits with children outweigh any minimal, and largely theoretical, benefits of imposing such a duty.

As discussed in more detail below (§ III.B., C., *post*), similar concerns counsel against imposing duties on corporations to supervise or fire a sole shareholder, or to warn, train, or educate about the dangers purportedly posed by a sole shareholder.

III. Each of Safechuck's negligence claims fails for other reasons, too.

Because the Corporations did not create the risk of harm, and there was also no special relationship giving rise to a duty to protect, all the negligence claims fail. Each particular claim also fails for additional reasons discussed below.

A. Safechuck has not adequately alleged a claim for negligence *per se*.

Improperly pleaded as part of his general negligence claim focusing on other purported duties, Safechuck claims that the Corporations somehow had duties as "mandated reporters" under the Child Abuse and Neglect Reporting Act ("CANRA") and are thus liable for negligence per se for not reporting. This theory fails for several reasons.[12]

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[12] Although a demurrer does not lie to part of a cause of action, a plaintiff may not evade demurrer by combining multiple

First, a negligence per se theory cannot create a duty where none exists. (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1285.) Rather, it is a presumption affecting "the *standard* of care, rather than the *duty* of care." (*Rice v. Center Point, Inc.* (2007) 154 Cal.App.4th 949, 958, italics in original.) When there is no duty as a matter of law, there is no negligence as a matter of law. The *standard* of care is inapposite. (*Id.* at pp. 958-959.)

Second, Safechuck's factual allegations do not support his theory. Safechuck argues that Jackson's assistants, Staikos and Levine, were mandated reporters under Penal Code section 11165.7, subdivision (a)(8): "An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency."[13] (AOB 50-51.) Yet Safechuck

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causes of action under one heading. (*CDF Firefighters v. Maldonado* (2011) 200 Cal.App.4th 158, 165.) Safechuck's claim for negligence per se based on CANRA is based on a separate and distinct alleged obligation and duty, and is thus a separate "cause of action" from his general negligence claim (*ibid.*; *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854), just as his claims for negligent supervision and the like discussed below would still be separate causes of action from the general negligence claim, even if he had pleaded them all under one heading in his complaint and not (correctly) separated them out.

[13] In the late 1980s and early 1990s, Section 11165.7 defined "child care custodians" (not "mandated reporters"). The definition that Safechuck relies on was not added until 1992—i.e., the tail end of the period when Safechuck alleges abuse. (*See* Stats. 1991, ch. 132, § 1; compare Pen. Code, § 11165.7 (West 1991) with Pen. Code, §11165.7 (West 1992).)

does not allege facts showing that Staikos and Levine's duties required "direct contact and supervision of children," or that either of them was *ever* required to supervise Safechuck. The examples of tasks that Safechuck references are arranging travel and scheduling meetings, neither of which requires, or even entails, direct contact with and supervision of children generally, or of Safechuck specifically. (AOB 51.) Accordingly, as the trial court held, Jackson's assistants were not mandated reporters under CANRA. (AA 347-48; RA 201 [prior judge rejecting contention that Corporations were mandated reporters].)

B. The negligent supervision and retention/hiring claims fail.

As the trial court correctly found, Jackson's status as the Corporations' sole owner and president forecloses Safechuck's claims for negligent supervision and negligent retention/hiring. (AA 7-8, 348-349.)

Safechuck's negligent supervision and retention/hiring claims necessarily presume that the Corporations had the *power* to hire, fire, and supervise Jackson. A corporation cannot *negligently* exercise powers it did not have in the first place. (*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"]; *Z.C. v. County of Riverside* (2015) 238 Cal.App.4th 889, 902 [negligent supervision requires "a person in a *supervisorial position* over the actor had prior

knowledge of the actor's propensity to do the bad act," italics added].)

As the trial court correctly observed, the Corporations did not "hire" Jackson—Jackson *created* them. (AA 349.) As sole shareholder (AA 7-9, 170, 178), Jackson had complete control over the Corporations: Corporate powers are exercised by the Board, whose members are elected by the shareholder and may be removed by the shareholder at any time without cause. (Corp. Code, §§ 300, subd. (a), 301, subd. (a), 303, subd. (a).)

The Corporations' agents could not supervise or fire Jackson. The Corporations had no duty to exercise a power they did not have. (See *In re Donahue Securities, Inc.* (Bankr. S.D. Ohio 2004) 318 B.R. 667, 677-678 [corporation's compliance officer could not be liable for negligent supervision of sole shareholder because shareholder had "ultimate authority" over employees, including compliance officer]; cf. *Coit Drapery Cleaners, Inc. v. Sequoia Ins. Co.* (1993) 14 Cal.App.4th 1595, 1605 ["the trial court properly found that there was no way Coit, the corporate entity, could have disciplined or supervised its president, chairman of the board, and major shareholder"].)

Moreover, the contention that the Corporations should have refrained from "hiring" Jackson—or should have fired him—is absurd. Safechuck alleges that MJJ Productions "was a company established by [Jackson] as his primary business entity and the entity that held most or all of the copyrights to [Jackson's] music and videos" (AA 7), and that MJJ Ventures "was a company established by [Jackson] in part for the purpose

of employing Plaintiff to work with [Jackson] on various projects" (AA 8). The Corporations were not like a school or church that could hire a different teacher or priest and exist independent of any specific employee. Jackson was *the* reason they existed.

Safechuck does not meaningfully dispute that the Corporations did not—and could not—hire, retain, or supervise Jackson. (AOB 52-56.) Safechuck even *admits* that the Corporations had no ability to fire Jackson. (AOB 42 ["While Defendants may not have been able to *fire* Jackson, they could have avoided facilitating the abuse"].) And regardless, because Jackson's access to Safechuck did not depend on the Corporations, firing Jackson, or failing to hire him, would not have reduced the risk of harm.

Safechuck instead argues that the Corporations should not be let off the hook because they are separate legal entities and because they purportedly engaged in "deplorable" conduct. (AOB 52-56.) These arguments are beside the point: The Corporations cannot be held liable for not doing something they *could not do*. But even on their own terms, Safechuck's arguments fail.

Communist Party v. 522 Valencia, Inc. (1995) 35 Cal.App.4th 980, the basis for Safechuck's "separate legal entities" argument (AOB 53-55), is irrelevant. *Communist Party* rejected the Party's attempt to wrest control of assets held by two corporations that the Party had set up and treated as separate entities. (*Id.* at p. 994.) The Party contended that the corporations were its alter ego, and thus the Party was entitled

to control their assets. (*Ibid.*) The court disagreed, explaining that the alter ego doctrine is designed to protect third parties, not to "unite two separate entities with *opposing* interests for the benefit of the one claiming to control the other." (*Id.* at p. 995, italics in original.)

This case is far afield from *Communist Party*. The Corporations have never argued that their separate corporate identities should be disregarded. Safechuck's *entire case* rests on the premise that they are legally distinct from Jackson. If Jackson and the Corporations are one-and-the-same, the claims against the Corporations are barred, just as those against the Estate are. (Procedural History § B, *ante*.)

Nor is there merit to Safechuck's argument that the Corporations should be held liable because their conduct was "deplorable." (AOB 56.) Safechuck contends that the Corporations "actively assisted Jackson in his sexual pursuit of Plaintiff and other young children despite their knowledge of his pedophilic tendencies." (*Ibid.*) Setting aside that the *specific allegations do not support* this contention (AA 11-26), whether the Corporations engaged in "deplorable" conduct has nothing to do with whether the Corporations could hire, retain, or supervise Jackson. There is no "deplorable conduct" exception to the rule that plaintiffs must adequately plead all elements of a claim.

C. The negligent failure to train, warn, or educate claim fails.

The trial court properly sustained the Corporations' demurrer to Safechuck's cause of action for "negligent failure to

train, warn or educate." (AA 350.) This claim is premised on the Corporations' alleged failure to protect Safechuck by warning, training, or educating him "about how to avoid" a risk of "sexual abuse, harassment and molestation" by Jackson. (AA 56.)

Absent a special relationship, there is no duty to warn people endangered by someone else's conduct. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203.) This is true even in cases where the defendant was aware of danger that a known pedophile posed to a specific child. (*Conti*, *supra*, 235 Cal.App.4th at pp. 1226-1227; *Eric J.*, *supra*, 76 Cal.App.4th at p. 727.)

In *Eric J.*, for example, the mother of a minor child, Eric, began dating Robert, unaware that he was a convicted sex offender. (76 Cal.App.4th at p. 718.) Robert's family knew Robert was a pedophile and had been specifically warned by his parole officer that he was likely to engage in pedophilia in the future. (*Id.* at p. 719.) Robert's family nevertheless let him be alone with Eric and did not warn Eric's mother. (*Id.* at pp. 718-719.) Robert repeatedly molested Eric in Robert's family members' homes. (*Ibid.*) Still, Eric's negligence claim against the family members failed because, absent a special relationship, Robert's family had no duty to protect Eric or to warn his mother about Robert. (*Id.* at p. 727.)

Here, the trial court correctly found that there was no special relationship giving rise to a duty for the Corporations to protect Safechuck. (AA 344, 346-347.) But even if there were a special relationship, *Rowland*'s public policy factors would counsel against imposing a duty on Jackson's wholly-owned

companies to warn, train, or educate Safechuck about the dangers Jackson allegedly posed. The analysis in both *Youth Soccer* and *Conti* is instructive.

In *Youth Soccer*, *supra*, 8 Cal.App.5th at pp. 1130-1131, 1135, the Court of Appeal found a special relationship between defendants (youth soccer organizations) and plaintiff (a youth soccer player) because "parents entrusted their children to defendants with the expectation that they would be kept safe and protected from sexual predators while they participated in soccer activities" and because defendants had control over who was in charge of children in their programs. Based on this special relationship, the court found that defendants had a duty to conduct criminal background checks of coaches who had contact with youth players. (*Id.* at p. 1138.)

Nevertheless, the *Youth Soccer* court *rejected* the plaintiff's claim that defendants had a duty to warn, train, or educate the children about the risk of childhood sexual abuse, because as "sports organizations," defendants were neither well suited, nor expected, to take on such a role. (*Id.* at pp. 1138-1139.) In this respect, the organizations in *Youth Soccer* were in a different position than the Boy Scouts in a prior case, *Juarez*, since the Boy Scouts *are* designed to teach moral principles and "had already developed a comprehensive program, including written materials and videotapes, to educate adult volunteers, parents, and boy scouts" about childhood sexual abuse. (*Id.* at p. 1139, citing *Juarez*, *supra*, 81 Cal.App.4th at pp. 398, 408.)

Here, the trial court correctly found that *Youth Soccer*'s rationale in not imposing a duty to warn, train or educate regarding the risk of sexual abuse "is even stronger with respect to the [Corporations]." (AA 350.) Safechuck's conclusory allegations that the Corporations "hired" Jackson to "mentor and train minors in the entertainment industry" (AA 9-10) are contradicted by his specific allegations that Jackson *created* the Corporations to manage Jackson's business affairs and hold the copyrights to his music (AA 7-8). Nor are there any allegations that *Safechuck* engaged Jackson as a mentor through the Corporations. But even accepting Safechuck's allegations that Jackson coached and mentored other children in the entertainment industry, and that he did so *through the Corporations*, such allegations do not impose on the Corporations a duty to warn, educate, or train families about abuse. Indeed, if a parent would not be expected to trust a youth sports organization to decide when and how to educate children about sexual abuse (*Youth Soccer*, *supra*, 8 Cal.App.5th at p. 1138), no parent would reasonably expect *a celebrity mentor in the entertainment industry* to do so.

Safechuck argues that the Corporations "knew or should have known" about the danger allegedly posed by Jackson. (AOB 58.) With respect to a purported duty to train and educate, the *Youth Soccer* court did not focus on whether the league knew about prior abuse—and, in fact, the court held that the league had a duty to conduct background checks to learn about it. The Court instead focused on the fact that parents would not want or

expect "youth sports organizations" to take on the role of training children about sexual abuse issues. (8 Cal.App.5th at pp. 1138-1139.)

Moreover, *Conti*'s analysis dispels any notion that a duty to warn existed here, even if the Corporations knew or should have known that Jackson posed a danger. In *Conti*, a minor in a Jehovah's Witnesses congregation was allegedly 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 give rise to a duty to restrict and supervise the adult congregant's participation. (*Id.* at pp. 1233-1235.)

However, as in *Youth Soccer*, the *Conti* court held that church leadership had *no* duty to warn members of the congregation (including plaintiff) of the dangers posed by the adult congregant *even though they knew he had previously molested another child*. (*Id.* at pp. 1227-1231.) As the court explained, "it would place an intolerably great and uncertain burden on a church to require that it continuously monitor a member for inappropriate behavior, and attempt to gauge when that behavior justified a warning about possible harm to another member." (*Id.* at p. 1231.) "Telling individual parents that a member had molested a child would also conflict with the public policy of confidentiality for penitential communications." (*Ibid.*)

Public policy likewise counsels against imposing a duty to warn here. Requiring employees of the Corporations to warn of the alleged danger posed by their president, owner, and sole

shareholder would be untenable. Since Jackson controlled the Corporations, such a duty would require *Jackson himself* to personally disclose and direct others to disclose his *purported* criminal inclinations. A duty to report or disclose *one's own* criminal conduct runs afoul of the Fifth Amendment's protection 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 third parties about suspicions about their boss's purported criminal activities would be similarly problematic. As described in *Conti*, the burden on the employee to determine the scope and triggering of the duty would be immense. (*Conti*, *supra*, 235 Cal.App.4th at p. 1228.) For example, "would the duty to warn be triggered by an accusation, or only an admission, of misconduct?" (*Ibid.*)

Additionally, whether her suspicions are correct or not, an employee publicly airing suspicions that her boss is a pedophile would be instantly fired and vulnerable to a defamation suit. (See *Cuff*, *supra*, 221 Cal.App.4th at pp. 590-591.) In other words, the duty that Safechuck urges is that an employee must either get herself fired and potentially sued for defamation, or stay on the job and potentially sued for negligent failure to warn if a factfinder later determines that she *should have suspected* criminal wrongdoing by her boss. Such a duty would have far-reaching consequences, be plagued by uncertainty, and probably accomplish nothing.

IV. The court correctly dismissed Safechuck's fiduciary duty claim because his allegations do not establish a fiduciary relationship.

The trial court found that Safechuck's claim for breach of fiduciary duty fails based on his inability to allege that he had a fiduciary relationship with the Corporations. (AA 342-345; see also RA 204 [prior judge finding, when sustaining prior demurrer on same claim, that Safechuck failed to allege that the Corporations were his fiduciaries].) That ruling was correct.

"[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf of and for the benefit of another, or must enter 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.) On that basis, the Supreme Court found no fiduciary duty where there was no showing that one party entered into a relationship "with the view of acting primarily for the benefit of" the other or to "subordinate its interests" to the other. (*Ibid.*)

Even accepting Safechuck's conclusory and unsupported allegations that the Corporations employed him, that would not meet the *City of Hope* standard. An employer does not enter into an employment relationship "with the view of acting primarily for the benefit of," or "subordinating its interests" to, the employee. The relationship is precisely the opposite: Employees work for their employer's benefit, with an undivided duty of loyalty towards the employer. Thus, "[i]n general, employment-type

relationships are not fiduciary relationships." (*O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 811.)

Safechuck emphasizes that he was a minor during the alleged employment (AOB 62), but he does not cite any authority indicating that an employment relationship becomes fiduciary merely because the employee is a minor.

Safechuck also argues that the Corporations were his fiduciaries because they supposedly oversaw his career, dance instruction, training, clothing, food, travel, and accommodations. (AOB 62.) But even accepting these allegations, there is no reason why this would create a fiduciary relationship. There is no allegation that the arrangement was a joint venture, partnership, or other relationship imposing fiduciary duties as a matter of law.

Safechuck's assertion that the Corporations "stood in loco parentis with respect to Plaintiff" (AOB 61) does not salvage his claim. The Corporations did not stand in loco parentis, and he was never in their custody. (§ II.B.2., *ante*.)

Safechuck's reliance on two pre-*City of Hope* Court of Appeal decisions is misplaced. The first decision involves a lawyer-client relationship, a paradigmatic fiduciary relationship, and the second does not discuss fiduciary duties at all. (AOB 60, quoting *Barbara A. v. John G.* (1983) 145 Cal.App.3d 369 and *Board of Ed. Of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808.) And 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. Such 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 pp. 387-388; *Committee On Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 221 ["efforts of commercial sellers—even those with superior bargaining power—to profit from the trust of consumers is not enough to create a fiduciary duty"], superseded by statute on another ground as stated in *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 242.)

V. The court correctly dismissed Safechuck's claim for intentional infliction of emotion distress.

The trial court correctly dismissed Safechuck's intentional infliction of emotional distress claim for failure to plead "extreme and outrageous" conduct *by the Corporations*. (AA 345-346.)

Safechuck's opening brief abandon's his complaint's theory that the Corporations' "outrageous and extreme" conduct was "putting [Jackson] in positions of authority" at the Corporations, and being "incapable of supervising and preventing" Jackson from engaging in abuse. (AA 46.) The Corporations did not put Jackson in positions of authority. Rather, Jackson established the Corporations to manage his business affairs. (AA 7-8.) There is nothing "extreme or outrageous" about a person holding a position of authority in entities *he* established to manage *his* business affairs. Similarly, the fact that the Corporations were incapable of policing the alleged conduct of their sole shareholder is not unexpected—much less "extreme and outrageous." It is a legal truth stemming from basic law governing corporate entities.

Nor, for good reason, does the opening brief rely on Safechuck's allegations that the Corporations "operated what is likely the most sophisticated public child sexual abuse procurement and facilitation organization the world has known," and that the Corporations' "managing agents and employees" were acting "as 'madams' or 'procurers' of child sexual abuse victims" for Jackson. (AA 8, 18.) The complaint's factual allegations do not support this hyperbole. As discussed above, the Corporations' employees did menial tasks at *Jackson's* direction, like booking travel and extending invitations. Following these directions does not evidence a *specific intent* to procure children as required by the procurement statute. (Pen. Code, § 266j.)

Moreover, procurement allegations amount to *direct perpetrator* claims, not claims against *nonperpetrator third parties*. (AA 345-346. See also Code Civ. Proc., § 340.1(d) [defining childhood sexual assault to include acts proscribed by Penal Code § 266j].) Section 340.1(a)(1) extends the statute of limitations for direct perpetrator actions, but specifically *excludes* ***entities*** from that extension. This was no accident. A corporation cannot be vicariously liable, under respondeat superior, for such acts; a corporation cannot directly commit an act of child molestation; and it is hard to see how it could form the specific intent necessary to be guilty of procurement.

Safechuck misses the point in arguing that he is not depending on the "direct perpetrator statute of limitations." (AOB 64-65.) Allegations of childhood sexual assault, including procurement, *are* direct perpetrator actions governed by

Section 340.1(a)(1). (*Joseph v. Johnson* (2009) 178 Cal.App.4th 1404, 1412-1415 [allegations that individual procured children governed by subdivision (a)(1), not subdivision (a)(3)].) The limitations-period for claims against *entities*, and not natural persons, for such conduct are not extended or revived. (*Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428, 447-448 [examining legislative history].) Thus, claims against *entities* cannot be based on direct perpetrator conduct and are time-barred. (*Id.* at pp. 433, 448-449 [intentional infliction claim against entity based on procurement allegations of employees were direct perpetrator claims, outside scope of section 340.1(a)(1), and thus time-barred].)

Courts consistently hold that subdivisions (a)(2) or (a)(3)—which "apply to persons or entities whose negligent or intentional act was a legal cause of the abuse"—"cannot be read to apply to the perpetrator." (*Aaronoff v. Martinez-Senftner* (2006) 136 Cal.App.4th 910, 920-921.) This further confirms that claims against entities, like the Corporations, are limited to allegations of *nonperpetrator* conduct and the statute of limitation is not extended as to entities who allegedly engaged in direct perpetrator conduct.

In other words, to the extent any employee of the Corporations was acting as a criminal procurer, Safechuck may have direct perpetrator claims against that *individual*. But he cannot hold *the Corporations* vicariously liable for that alleged criminal conduct through an intentional infliction claim. (*Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th 790, 813-814

[no vicarious liability for intentional infliction caused by employee's use of work computer to send cyberthreats "because [employee] 'substantially deviate[d] from the employment duties for personal purposes'"].)

Once Safechuck's procurement allegations are set aside, the remaining allegations are insufficient to allege "extreme" or "outrageous" conduct *by the Corporations*. The only conduct that Safechuck's opening brief argues is extreme or outrageous is that the Corporations allegedly "took minors into their custody and represented to these minors' parents that Jackson was fit mentor, even though they had knowledge to the contrary." (AOB 64.) The complaint allegations that Safechuck's brief cites for such representations do not mention Safechuck at all, but only "children" or "minors" generally. Regardless, to the extent Safechuck means the Corporations deliberately procured him for Jackson, that claim is barred as just described.

Moreover, as discussed, the factual allegations do not establish that the Corporations took Safechuck into their custody—Safechuck alleges only that the Corporations relayed invitations, and arranged and paid for his and his family's travel, food, and entertainment. Those incidental actions are not extreme or outrageous conduct, especially given that the Corporations had no duty to protect Safechuck or warn him about the dangers that Jackson allegedly posed. (See § III.C, *ante*.)

VI. The court properly sustained the demurrer *without* leave to amend.

Where, as here, a plaintiff has effectively declined an invitation to amend (RT 11), this Court "presume[s] the complaint states as strong a case as the plaintiff can muster." (*Stonehouse Homes*, *supra*, 167 Cal.App.4th at p. 539.) Furthermore, Safechuck has the burden to establish that a defective complaint can be cured by amendment. (*Morales*, *supra*, 25 Cal.App.5th at p. 93.) He has made no effort to meet that burden; and could not do so, having *expressly declined* the trial court's invitation to explain how the defects in the complaint could be remedied. (RT 11:19-28.)

CONCLUSION

The actual impediment to Safechuck's case is that Jackson is deceased—after all, were Jackson alive, he would be subject to suit even today under the extended statute of limitations—and that Safechuck missed the creditors' claims deadline by many years. The trial court correctly rejected Safechuck's attempted end-run around that problem by transforming *Jackson's alleged criminal conduct* into the *negligence of the Corporations*. Allowing Safechuck's claims against the Corporations to proceed would require the Court to rewrite negligence and other tort law, expanding liability against all kinds of actors in various unpredictable ways.

The judgment should be affirmed.

Dated: February 9, 2022

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Respondents' Brief contains **13,994 words**, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: February 9, 2022

/s/ Jonathan P. Steinsapir
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PROOF OF SERVICE

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 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

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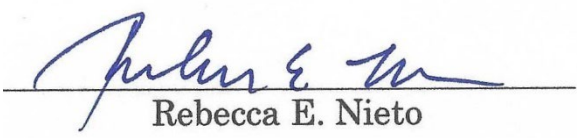

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/9/2022

Date

/s/Rebecca Nieto

Signature

Rotter, Alana (236666)

Last Name, First Name (PNum)

Greines Martin Stein & Richland LLP

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