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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF LOS ANGELES, CENTRAL COURT

15 Coordinated Proceeding)
 Special Title (Rule 1550(b)))
 16)
 17 **THE CLERGY CASES I**)
 _____)
 18 This Document Relates to Los Angeles Superior)
 Court Case No. BC307683)
 19)
 20 MOLLY MORAN HARDING,)
 Plaintiff,)
 21)
 22 v.)
 23 DEFENDANT DOE 1, et al,)
 Defendants.)
 24)
 25)
 26)
 27)
 28)

**JUDICIAL COUNCIL COORDINATION
 PROCEEDING NO. 4286**

Trial Coordinating Judge:
 The Honorable Haley J. Fromholz
 Department 20

**PLAINTIFF'S OPPOSITION TO
 DEFENDANT DOE 1'S DEMURRER TO
 PLAINTIFF'S FIRST AMENDED
 COMPLAINT**

Complaint Filed: December 12, 2003
 Trial Date: February 28, 2007

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1 **I. INTRODUCTION**

2 This case involves sexual abuse suffered by Molly Moran Harding (“Plaintiff”) at the hands of
3 Father Joseph A. Lopez, a Claretian Order priest assigned to San Gabriel Mission High School in the
4 Archdiocese of Los Angeles. Plaintiff was a minor student at San Gabriel Mission High School when
5 Father Lopez began to sexually abuse her in or about the Fall of 1964. The abuse continued beyond
6 Plaintiff’s 18th birthday in 1966, finally ending in 1970.

7 On December 12, 2003, Plaintiff filed a Complaint in this matter alleging causes of action related
8 to their sexual abuse and seeking damages from defendants. On December 14, 2006, the Court
9 sustained in part and denied in part Defendants’ Omnibus Demurrer (“December 14 Order”). As a
10 result, Plaintiff filed a First Amended Complaint (“FAC”) on January 3, 2007. In response, Defendant
11 Doe 1 filed this Demurrer.

12 **II. THE PLAINTIFFS’ COMPLAINT MUST BE LIBERALLY CONSTRUED, AND ALL OF**
13 **PLAINTIFFS’ ALLEGATIONS ARE TO BE ACCEPTED AS TRUE.**

14 A demurrer tests only the allegations contained in the complaint, and the function of a demurrer
15 is to test the sufficiency of a pleading by raising questions of law. Buford v. State of Cal. (1980) 104
16 Cal.App.3d 811, 818. On demurrer, pleadings are read liberally and the allegations contained therein
17 are assumed to be true. Banerian v. O’Malley (1974) 42 Cal.App.3d. 604, 610-11.

18 For purposes of ruling on demurrer, the allegations of the complaint are presumed true, regardless
19 on how improbable the facts may appear. Blank v. Kirwan (1985) 39 Cal.3d 311, 318. A general
20 demurrer does not put at issue the plaintiff’s ability to prove the allegations contained in the complaint,
21 and any perceived difficulty of proof is not to be considered by the courts in its examination of the
22 general demurrer. Alcorn v. Anbro Eng’g Inc. (1970) 2 Cal.3d 493, 496. Also taken as true are facts
23 that may be implied or inferred from those expressly alleged. Kiseskey v. Carpenters’ Trust for So.
24 Cal. (1983) 144 Cal.App.3d 222, 228.

25 Thus, in considering a demurrer, the complaint must be liberally construed by drawing all
26 reasonable inferences from the facts pleaded, with a view towards substantial justice to all parties.

1 Flynn v. Higham (1983) 149 Cal.App.3d 677, 679; Wilner v. Sunset Life Ins. Co. (2000) 78
2 Cal.App.4th 952, 958; King v. Central Bank (1977) 18 Cal.3d 840, 843.

3 In reviewing a complaint to determine whether a cause of action has been stated, the court is
4 to examine the complaint in its entirety, and if upon consideration of all the facts stated it appears the
5 plaintiff is entitled to some relief, the demurrer is to be overruled. Selby Realty Co. v. City of San
6 Buenaventura (1973) 10 Cal.3d 110, 123. “[I]f upon a consideration of all the facts stated, it appears
7 that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint
8 will be held good, although the facts may not be clearly stated, or may be intermingled with a
9 statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand
10 relief to which he is not entitled under the facts alleged.” Matteson v. Wagoner (1905) 147 Cal. 739,
11 742. In other words, a “plaintiff need only plead facts showing that he may be entitled to some relief.”
12 Alcorn, 2 Cal.3d at 496.

13 **III. PLAINTIFF’S FIRST AMENDED COMPLAINT IS NOT TIME-BARRED**

14 Having failed to succeed in various challenges to the constitutionality of C.C.P. § 340.1,
15 Defendants’ engage in what can only be described as a last-ditch effort to circumvent the legislature’s
16 mandate that allowed Plaintiff to file this lawsuit. In the newest iteration of their argument,
17 Defendants dispense with their constitutional arguments, which have been summarily rejected by this
18 and other courts. See, e.g., December 14, 2006 Order at 19 (holding that C.C.P. § 340.1 does not
19 violate Defendants’ due process rights). Instead, Defendants now argue that Plaintiff’s claims are
20 barred by the language of the statute that, in fact, revived them.

21 Defendants take pains to contort the language of this statute and argue that, in order to proceed,
22 Plaintiff must show that her claim “would have been timely on January 1, 1999.” (Demurrer at 3.)
23 Frankly, Defendants’ newest reading of this statute defies both logic and common sense.

24 **A. DEFENDANT’S SUBSEQUENT ARGUMENTS REGARDING THE APPLICATION OF** 25 **340.1 ARE PRECLUDED**

26 After full briefing and argument of the omnibus demurrers based on the Master Complaint, the
27 Court issued an Order on December 14. The Order detailed the legislative history of C.C.P. § 340.1,
28 and the Court held that Plaintiffs’ claims were not time-barred. December 14 Order at 16-23. Plaintiff

1 amended her Complaint in compliance with the Court's Order, and Defendant now brings a second
2 demurrer. Looking for a "second bite at the apple," Defendants' second demurrer seeks to relitigate
3 issues related to C.C.P. § 340.1 that have already been decided based on novel theories of statutory
4 interpretation. Defendant's arguments related to the timeliness of Plaintiff's claims should, therefore,
5 be precluded. If the demurrer had been sustained on this count, Plaintiff would have been precluded
6 from rearguing the statute of limitations. See Border Business Park, Inc. v. City of San Diego, 142
7 Cal. App. 4th 1538, 1565-66 (4th App. Dist. 2006) (holding that an "order sustaining the demurrer
8 meets the criteria for a final judgment for purposes of issue preclusion"). Because Defendants could
9 have argued these points when they filed their omnibus demurrer, the December 14 Order "precludes
10 consideration of [these] contentions at this juncture." Id. at 1566; see also Volkswagen of America,
11 Inc. v. Superior Court, (2001) 94 Cal. App. 4th 695, 704-708 (describing purpose behind consolidating
12 cases and filing of master and summary complaints).

13 Even if the Court does not agree that Defendants are effectively estopped from continually
14 propounding new theories with regard to the same statute, Defendants' latest demurrer based on the
15 statute of limitations must still be overruled as it is without merit.

16 **B. PLAINTIFF'S CLAIM WAS NOT REQUIRED TO BE TIMELY AS OF JANUARY 1, 1999**

17 In what can only be described as a completely tortuous reading of a statute, Defendants argue that
18 the legislature intended to open a one-year "window" for previously time-barred claims if, and only
19 if, the Plaintiffs' claims were not time-barred as of January 1, 1999. Thus, Defendants' reading
20 would give no effect to the 2002 amendment of C.C.P. 340.1.

21 Prior to 2002, C.C.P. § 340.1, allowed the filing of a lawsuit for damages resulting from childhood
22 sexual abuse "within eight years of the date the plaintiff attains the age of majority or within three
23 years of the date the plaintiff discovers or reasonably should have discovered" his injuries. C.C.P. §
24 340.1(a) (2001). For an action to be brought against any person or entity other than the perpetrator,
25 such a suit must have been filed prior to the plaintiff's 26th birthday. C.C.P. § 340.1(b) (2001).¹

26
27 ¹ The relevant portions of the 2001 statute read:

28 (a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time
for commencement of the action shall be within eight years of the date the plaintiff attains the

1 In 2002, the legislature amended C.C.P. § 340.1. The majority of the statute remained unchanged.
2 However, the legislature added (b)(2), which provides that a plaintiff may commence a suit against a
3 non-perpetrator entity after his 26th birthday if “the person or entity knew or had reason to know, or
4 was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative,
5 or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of
6 unlawful sexual conduct in the future by that person, including, but not limited to, preventing or
7 avoiding placement of that person in a function or environment in which contact with children is an
8 inherent part of that function or environment.” Thus, the legislature extended the three-year “discovery
9 rule” to non-perpetrator defendants where such persons or entities had actual or constructive notice
10 of sexual abuse by an employee. Defendant would have the Court stop reading the statute here.

11 The legislature, however, made further changes. A new provision, subsection (c), was added that
12 allows previously time-barred claims to be brought under a one year “window”:

13 Notwithstanding any other provision of law, any claim for damages described in paragraph (2)
14 or (3) of subdivision (a) that is permitted to be filed pursuant to paragraph (2) of subdivision
15 (b) that would otherwise be barred as of January 1, 2003, solely because the applicable statute
16 of limitations has or had expired, is revived, and, in that case, a cause of action may be
17 commenced within one year of January 1, 2003. Nothing in this subdivision shall be construed
18 to alter the applicable statute of limitations period of an action that is not time barred as of
19 January 1, 2003.
20 C.C.P. § 340.1 (c) (2003).

19 age of majority or within three years of the date the plaintiff discovers or reasonably should
20 have discovered that psychological injury or illness occurring after the age of majority was
21 caused by the sexual abuse, whichever period expires later, for any of the following actions:

- 22 (1) An action against any person for committing an act of childhood sexual abuse.
 - 23 (2) An action for liability against any person or entity who owed a duty of care to the plaintiff,
24 where a wrongful or negligent act by that person or entity was a legal cause of the childhood
25 sexual abuse which resulted in the injury to the plaintiff.
 - 26 (3) An action for liability against any person or entity where an intentional act by that person or
27 entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.
- 28 (b) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or
after the plaintiff's 26th birthday.

C.C.P. 340.1 (2001).

1 Plaintiffs' lawsuit was filed pursuant to the one year window. As Defendant points out, Plaintiff's
2 claim was previously time-barred at the time the legislation was passed. Plaintiff was over the age of
3 26 and, while not conceding this point entirely, she had arguably discovered her injuries more than 3
4 years prior to the passage of the legislation. But Defendant's construction effectively reads the 2002
5 amendment out of the statute, which the court must not allow. See, e.g., Comedy III Prods. v. Gary
6 Saderup, 25 Cal. 4th 387, 395 (2001) (holding that language added by the legislature cannot be read
7 out of a statute); Garcia v. McCutchen, 16 Cal. 4th 469, 476 (1997) ("We must presume that the
8 Legislature intended 'every word, phrase and provision . . . in a statute . . . to have meaning and to
9 perform a useful function.'").

10 **C. PLAINTIFF'S COMPLAINT ALLEGES FACTS WITH ENOUGH CERTAINTY TO**
11 **DEFEAT A DEMURRER**

12 Defendant argues that Plaintiff's Complaint fails to allege any facts that to support Plaintiff's
13 contention that Defendant Doe 1 "actually knew" of Lopez's propensity for abuse. (Demurrer at 4.)
14 Of course, actual knowledge is not required for liability, rather the standard includes constructive
15 knowledge. Some of Defendant's reasons to know about Plaintiff's abuse are described in Plaintiff's
16 Complaint at pp. 5-6. What Defendants knew or should have known are questions of fact, and
17 discovery has just begun in this case. As with all questions of fact, whether they are sufficient is a
18 question better suited for summary judgment or trial.

19 Similarly, Defendant's contention that Plaintiff's phrasing with regard to various terms used in the
20 FAC are "ambiguous and uncertain" must fail. Plaintiff's Complaint is based on the Master Complaint
21 approved by the Court in these consolidated cases. Plaintiff contends that, as they stand, the
22 allegations are, therefore, sufficient to withstand a demurrer. The Defendants are sufficiently
23 distinguished. Each Doe Defendant is identified at pp. 2-3. Because Defendants relationship to one
24 another is not readily apparent, Plaintiff has had to plead her claims on information and belief.
25 Discovery, which is just beginning, will allow Plaintiff to ascertain the true nature of the Defendants'
26 relationships, such that subsequent pleadings or amendments can be made more specific. To date,
27 however, Defendants have been less than forthcoming about the nature of their relationships, leaving
28 Plaintiff with little option but to pursue all claims against all Defendants. "[I]f upon a consideration

1 of all the facts stated, it appears that the plaintiff is entitled to any relief at the hands of the court
2 against the defendants, the complaint will be held good, although the facts may not be clearly stated,
3 or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or
4 although the plaintiff may demand relief to which he is not entitled under the facts alleged.” Matteson
5 v. Wagoner (1905) 147 Cal. 739, 742.

6 **D. PLAINTIFF HAS PLED RATIFICATION WITH ENOUGH SPECIFICITY TO SUPPORT**
7 **HER CLAIMS FOR NEGLIGENCE**

8 Defendant incorrectly implies that “[r]atification is the only theory by which this Court would
9 permit vicarious liability against the defendants based on the acts of an accused priest.” (Demurrer
10 at 4.) Defendant ignores the fact that the Court held that the Master Complaint, on which Plaintiff’s
11 FAC is based, had sufficiently alleged facts that state a claim for direct liability on various negligence
12 counts. December 14 Order at 35-42. Further, Defendant goes on to make the exact same argument,
13 relying on the same cases, that Court dismissed in the omnibus demurrer. December 14 Order at 34.
14 For the reasons stated in the Court’s prior Order, Defendant’s demurrer as to ratification must be
15 overruled. Whether Defendant ratified Lopez’s abuse of Plaintiff is a question of fact, and during a
16 demurrer, all questions of fact must be resolved in favor of the complaining party. Banerian v.
17 O’Malley (1974) 42 Cal.App.3d. 604, 610-11. Should the Court disagree, any error on the part of
18 Plaintiff is easily corrected and Plaintiff seeks leave to further amend her Complaint.

19 **E. PLAINTIFF HAS STATED A CAUSE OF ACTION FOR FRAUD (Count 5)**

20 Defendant argues that Plaintiffs have failed to state specific facts sufficient to give rise to a cause
21 of action for fraud. This is in error. The Court has already ruled that the facts, as stated by the
22 Plaintiff, are sufficiently specific to state a cause of action for fraud against Defendant Archdiocese.
23 This issue has been litigated at length in the prior demurrers and the Court has clearly stated that the
24 representations made by the Plaintiffs were sufficient to state a claim for fraud. December 14 Order,
25 at 42-49. As the Court noted regarding “the fifth cause of action [for fraud], Plaintiffs are correct [that
26 whether] Defendants concealed or failed to disclose knowledge of the perpetrator’s tendency or history
27 of child molestation would likely be more available to Defendants than to Plaintiffs.” Id. at 44. For
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1 this reason, the Court overruled Defendants' demurrer on the fifth cause of action for fraud.²
2 Accordingly, Plaintiff has stated a valid causes of action for Count 5. Should the Court find Plaintiff's
3 FAC is somehow deficient in this regard, Plaintiff can easily amend the facts based on the discovery
4 conducted thus far to satisfy this requirement.

5 **F. PLAINTIFF HAS PLED SUFFICIENT FACTS TO SUPPORT THEIR BREACH OF**
6 **FIDUCIARY DUTY CLAIM (Count 7)**

7 **1. Plaintiffs Have Sufficiently Alleged a Confidential Relationship Based on Their**
8 **Attendance at a School Operated by the Defendants**

9 In Richelle L. v. Roman Catholic Archbishop, (2004) 106 Cal. App. 4th 257, the Court of Appeals
10 held that the confidential relationship between priest and parishioner may give rise to fiduciary duties
11 where the parishioner's youth, among other factors, makes him more vulnerable to the priest's superior
12 power. Defendant also ignores the Court's ruling on the omnibus demurrer with regard to this count.
13 This Court has already held that the allegations in the Master Complaint are sufficient to overrule a
14 demurrer because whether a confidential relationship existed "is a a question of fact that cannot be
15 decided on a demurrer as a matter of law." December 14 Order at 48-49.

16 Further, in his September 23, 2004 Order in Clergy III cases, The Honorable Judge Sabraw
17 recognized that the operation of a school could be a basis for imposition of a fiduciary duty against a
18 religious organization. The court noted that there may be authority that a fiduciary relationship may
19 exist between children and "*schools, youth organizations, summer camps, and similar organizations.*"
20 Sept. 23 Order at 19-20 (emphasis added).

21 A school-student relationship clearly fits within the California definition of one that creates a
22 fiduciary duty. "One standing in a fiduciary relation with another is subject to liability to the other for
23 harm resulting from a breach of duty imposed by the relation." Restatement (Second) of Torts,
24 Violation of Fiduciary Duty, § 874, quoted in Richelle L., supra. The fiduciary's obligations to the
25 dependent party include a duty of loyalty and a duty to exercise reasonable skill and care. Restatement

26 ² The court granted Defendants' omnibus demurrer, with leave to amend, Plaintiffs'
27 sixteenth cause of action for fraud/misrepresentation to the Plaintiff because these facts
28 would more likely be known to the Plaintiff than the Defendants. December 14 Order at
44. Plaintiff's FAC omits this cause of action, because at the time of filing, Plaintiff did
not feel she had sufficient facts to state a claim for misrepresentation.

1 (Second) of Trusts, §§ 170, 174. Thus, “[a] fiduciary who commits a breach of his duty as a fiduciary
2 is guilty of tortious conduct to the person for whom he should act...[T]he liability is not dependent
3 solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results
4 from the relation.” Restatement (Second) of Torts § 874 cmt. b. “The essence of a fiduciary or
5 confidential relationship is that the parties do not deal on equal terms, because the person in whom
6 trust and confidence is reposed and who accepts that trust and confidence is in a superior position to
7 exert unique influence over the dependent party. Richelle L., Cal. App. 4th at 271. A “confidential
8 relationship may be founded on a moral, social, domestic, or merely personal relationship, as well as
9 on a legal relationship. Id.

10 The elements of a confidential relationship have been described as: “1) The vulnerability of one
11 party to the other which 2) results in the empowerment of the stronger party by the weaker which 3)
12 empowerment has been solicited and accepted by the stronger party and 4) prevents the weaker party
13 from effectively protecting itself.” Langford v. Roman Catholic Diocese of Brooklyn, 177 Misc. 2d
14 897, 900 (N.Y. Sup. Ct. 1998), aff’d, 271 A.D. 2d 494 (N.Y. App. Div. 2000) (quoted in Richelle L.,
15 Cal. App. 4th at 272.) “A ‘confidential relationship’ ...refers to an unequal relationship between parties
16 in which one surrenders to the other some degree of control because of the trust and confidence which
17 he reposes in the other.” Richelle L., Cal. App. 4th at 273 n.6.

18 The basic elements of a confidential relationship clearly exist here, both in terms of a general
19 relationship between a high school and its students, as well as in the specific terms of the relationship
20 between the Defendant and Plaintiff. As to the general relationship, there clearly is an unequal
21 relationship between a school and one of its students in which the student surrenders to the school
22 some degree of control because of the trust and confidence which he reposes in the other. Moreover,
23 even if this Court were to find that a school generally does not have a fiduciary obligation to its
24 students, the Defendant’s demurrer should be overruled based on the allegations of a *specific*
25 relationship between Plaintiff and the Defendant school. Plaintiff attended the Defendant school,
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1 which Plaintiff alleges had a principal/agency relationship with the Defendant.³ Thus, a special
2 fiduciary relationship of trust existed between Plaintiff and Defendant.

3 Again, "the existence of a confidential relationship is a question of fact." December 14 Order at
4 47. Any contention by the Defendant that this Court can now hold as a matter of law that there was
5 no confidential relationship between the Defendant and Plaintiff must be rejected, since Plaintiff's
6 FAC can be read as alleging sufficient factual elements of a confidential relationship that gives rise
7 to a claim for breach of fiduciary duty. Since on a demurrer the allegations of a complaint must be
8 taken as true, then Plaintiffs' cause of action for breach of fiduciary duty cannot be dismissed at the
9 pleading stage, and the Defendant's demurrer must be overruled.

10 **2. Plaintiffs Have Sufficiently Alleged a Confidential Relationship Based on Her Provision**
11 **of Services to the Defendants as a Work-Study Employee**

12 Plaintiff was employed as part of a work-study program at Defendant school and assisted
13 Father Lopez in the provision of services by and on behalf of the Defendants. (FAC at 6, ¶ 8.) By
14 considering the factors for the creation of a confidential relationship described above, it is clear that
15 Plaintiff has sufficiently alleged that when she entered into the relationship with the Defendant school
16 as an employee, and as an individual providing services to Father Lopez on behalf of the Defendants,
17 this created a special relationship sufficient to give rise to fiduciary duties. Plaintiff, a minor, clearly
18 was the weaker party and the Defendant the stronger party in this relationship. The Defendant
19 requested that Plaintiff provide services in return for tuition, and thus solicited this power over Plaintiff
20 and accepted the benefits of this empowerment.

21 Plaintiff's FAC, as it stands, sufficiently alleges a confidential relationship between the Defendants
22 and Plaintiff concerning Plaintiff's services to the Defendants as an employee. Should the Court
23 disagree, Plaintiff can easily amend the facts based on the discovery conducted thus far to satisfy this
24 requirement.

25 **G. PLAINTIFF HAS STATED A CLAIM FOR INTENTIONAL INFLICTION OF**
26 **EMOTIONAL DISTRESS (Count 9)**

27 ³ Who controls and operates the Defendant School is a question which, to date, has not
28 been answered by discovery. Plaintiff's FAC did not include these specific allegations
(beyond the existence of an agency relationship), however the FAC could be amended
to state these facts with more particularity should the Court so require.

1 Here again, Defendant seeks to relitigate an issue that was clearly decided in the Court's December
2 14 Order. With regard to Plaintiff's claim of intentional infliction of emotional distress ("IIED"), the
3 Court noted that in paragraphs 56-59 of the Master Complaint (and of Plaintiff's FAC), pled the
4 elements of IIED. December 14 Order at 52. Further the Court explicitly held that "the existence of
5 specific facts supporting the cause of action are properly resolved on a motion for summary judgment
6 or adjudication or at trial." *Id.* at 52-53 (emphasis added).

7
8 **H. PLAINTIFF HAS PLED SUFFICIENT FACTS TO STATE A CAUSE OF ACTION FOR**
9 **VIOLATION OF VARIOUS PENAL CODE SECTION (Counts 10 through 12)**

10 At risk of being redundant, Plaintiff points out that the Court has already rejected Defendant's
11 arguments with regard to these causes of action. December 14 Order at 54-57.

12 **1. Plaintiff Has Stated a Cause of Action for Violation of Penal Code § 32 (Count 10)**

13 Defendant essentially argues that Plaintiff's tenth cause of action must fail for three reasons. First,
14 while admitting that 340.1's list of predicate offenses is not exclusive, Defendant argues that the
15 offense prohibited by "Penal Code § 32 is not of a similar nature." (Demurrer at 9). The Court has
16 already ruled that Defendant's argument is without merit. December 14 Order at 54. Second,
17 Defendant argues that Plaintiff's tenth cause of action must fail because "agents and employees cannot
18 aid and abet their corporate principals and employers." (Demurrer at 9.) By making this argument,
19 Defendant realizes that a necessary fact must be established, i.e. that the other Defendants and/or
20 Lopez were agents of this Defendant. Of course, as discussed *supra*, agency is a question of fact and
21 not properly before the Court on a demurrer. Finally, Defendant argues that liability for violation of
22 Penal Code § 32 "requires that Defendant knew the full extent of the accused's criminal purpose. . . ."
23 Again, the extent of Defendant's knowledge is a question of fact. Defendant's demurrer on this count
24 must be overruled.

25 **2. Plaintiff Has Stated a Cause of Action for Violation of Penal Code § 11166 (Count 11)**

26 Defendant argues that Plaintiff's eleventh cause of action for violation of Penal Code § 11166 must
27 fail because Defendant is not a "mandated reporter." (Demurrer at 10.) Defendant fails to recognize,
28 as this Court did in ruling on the omnibus demurrer, that Defendants may be liable as "child care

1 custodians or school administrators.” December 14 Order at 55-56. Further, even if Defendant is
2 correct, they fail to acknowledge that various agents, including other teachers or school administrators
3 of Defendant, may have been mandated reporters. Under Plaintiff’s vicarious liability theory,
4 Defendant may be liable for the acts and omissions of their agents. Id. at 57. Indeed, the Penal Code
5 provides:

6 Employers are strongly encouraged to provide their employees who are mandated reporters
7 with training in the duties imposed by this article. This training shall include training in child
8 abuse and neglect identification and training in child abuse and neglect reporting. Whether or
9 not employers provide their employees with training in child abuse and neglect identification
10 and reporting, the employers shall provide their employees who are mandated reporters with
11 the statement required pursuant to subdivision (a) of Section 11166.5.

12 Cal. Pen. Code § 11165.7(c).

13 Defendant again attempts to buttress its argument by rehashing the same argument this Court
14 already overruled on the omnibus demurrer. Indeed, the Court has held that whether Defendant was
15 a mandated reporter or in any way violated its duties under the Penal Code as an employer is “a
16 question of fact that cannot be determined as a matter of law.” Id. at 55.

17 **3. Plaintiff Has Stated a Cause of Action for Violation of Penal Code § 273a (Count 12)**

18 Here, Defendant attempts to mask the fact that it is making the same argument made in the
19 omnibus demurrer. Relying on an inapposite case, Defendant argues that Plaintiff fails to state a claim
20 for violation of Penal Code 273a because this provision of the Penal Code “was intended to punish
21 child abusers” (Demurrer at 10) and because there is no allegation that Defendant “committed the
22 alleged abuse.” (Demurrer at 11.) This is the same as saying, as Defendant argued in the omnibus
23 demurrer, that “Penal Code § 273a can only be violated by a person, not an entity.” December 14
24 Order at 57.


25 The Court has already determined that the allegations in the Master Complaint, on which Plaintiff’s
26 FAC are based, are sufficient to overrule a demurrer on this claim. December 14 Order at 56-57.
27 Moreover, Defendant fails to consider that it may be liable for the acts of its agents, including the
28 other Defendants, on a theory of vicarious liability. Id. at 57.

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VI. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that the Court overrule Defendant Archdiocese's Demurrer. Should the Court sustain Defendants' Demurrer in whole or in part, Plaintiffs respectfully request leave to amend their Complaint a second time. See, e.g., Aubry v. Tri-City Hospital Dist., 2 Cal. 4th 962, 970-71 (leave to amend Complaint should be liberally granted).

March 27, 2007

BY: 

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I am employed in the City of Margate, County of Atlantic, State of New Jersey. I am over the age of 18 years and not a party to the within action. My business address is Ross & Rubino, LLP, 8510 Ventnor Avenue, Margate City, NJ 08402.

On March 27, 2007, I served the foregoing document described as **PLAINTIFF'S OPPOSITION TO DEFENDANT DOE 1'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**, as follows:


By Mail. The document was served on the parties in this action listed on the attached Mailing List by placing a true copy thereof, enclosed in a sealed envelope, and addressed as indicated on the Mailing List. I deposited such envelope in the mail at Margate, New Jersey. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U. S. Postal Service on that same day, with postage thereon fully prepaid, at Margate, New Jersey, in the ordinary course of business.

By Electronic Service. Pursuant to Case Management Order of Judicial Counsel Coordination Proceeding Nos. 4286, the document was served via CaseHomePage. I forwarded an electronic version (Portable Document Format (pdf)) of the within papers for uploading on March 27, 2007, to CaseHomePage.

By Facsimile. In addition to regular mail, I sent this document via facsimile, to the number(s) as listed on the attached Mailing List.

By Overnight Mail. I arranged for this document to be delivered to the address(es) listed on the attached Mailing List by overnight mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on March 27, 2007, at Margate, NJ.

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Kathleen C. Calcagnini

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