CASE NO. 171382

IN THE SUPREME COURT OF CALIFORNIA

TERRY QUARRY, et al.,
Plaintiffs and Respondents.

v.

DOE 1 DIOCESE,
Defendant and Appellant.

After a Published Decision by the Court of Appeal, First Appellate District, Division 4
Case No. A120048

Following a Dismissal After an Order Sustaining a Demurrer Without Leave to Amend By Alameda County Superior Court, No. HG07313640
Honorable Kenneth Mark Burr

PLAINTIFFS AND RESPONDENTS ANSWER TO PETITION FOR REVIEW

Irwin M. Zalkin, Esq. (#89957)
Devin M. Storey, Esq. (#234271)
ZALKIN & ZIMMER, LLP
12555 High Bluff Drive, Suite 260
San Diego, CA 92130
Telephone: 858/259-3011
Facsimile: 858/259-3015
Attorneys for Plaintiffs / Respondents

CASE NO. 171382

IN THE SUPREME COURT OF CALIFORNIA

TERRY QUARRY, et al.,
Plaintiffs and Respondents,

v.

DOE 1 DIOCESE,
Defendant and Appellant.

After a Published Decision by the Court of Appeal, First Appellate District, Division 4
Case No. A120048

Following a Dismissal After an Order Sustaining a Demurrer Without Leave to Amend By Alameda County Superior Court, No. HG07313640
Honorable Kenneth Mark Burr

PLAINTIFFS AND RESPONDENTS ANSWER TO PETITION FOR REVIEW

Irwin M. Zalkin, Esq. (#89957)
Devin M. Storey, Esq. (#234271)
ZALKIN & ZIMMER, LLP
12555 High Bluff Drive, Suite 260
San Diego, CA 92130
Telephone: 858/259-3011
Facsimile: 858/259-3015
Attorneys for Plaintiffs / Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Respondents submit the following opposition to Defendant Doe 1's (hereinafter "petitioner") Petition for Review of the published decision issued on February 10, 2009, by Division Four of the California Court of Appeal for the First Appellate District in *Quarry v. Doe 1* (2009) 170 Cal.App.4th 1574 (Rivera, J., with Ruvolo, P.J., and Sepulveda, J., conc.).

I. REASONS REVIEW SHOULD BE DENIED

Petitioner portrays the decision of the Court of Appeal as blazing legal trails, departing from established authority at every bend, turning a blind eye to Supreme Court authority, and molding its analysis to reach a preconceived result, regardless of its legal correctness. The Opinion is actually far less interesting.

The Court of Appeal's analysis was unremarkable and does not justify review. The Court of Appeal correctly harmonized its result with the plain language of California Code of Civil Procedure § 340.1, the plainly-stated objectives of the most recent amendment to that statute, the "primary purpose behind the statute and its legislative evolution," as well as the procedural and remedial nature of section 340.1.[1] In short, the thoroughly-researched and well-written opinion applied longstanding canons of

---

[1] All further statutory references are to this Code, unless otherwise noted.

statutory construction, and accepted legal principles relating to the prospective application of procedural statutes to reach an outcome; albeit one with which the petitioner does not agree.

This Court should deny the Petition for Review, because it fails to satisfy any of the four circumstances justifying review listed in Rule 8.500(b) of the California Rules of Court. The only standard for review raised by petitioner is that review is necessary to "secure uniformity of decision or to settle an important question of law."[2] Lacking a conflict of law sufficient to justify review of the decision of the Court of Appeal, petitioner embarks on an odyssey to create conflict where none exists. In doing so, petitioner employs the kitchen sink method of argument claiming that the Court of Appeal deviated from established law in three distinct areas; thereby creating conflicts needing resolution by this Court.

In making these arguments, petitioner ignores decades of authority relating to the precedential effect of published opinions by claiming statements made in dicta in *Hightower v. Roman Catholic Bishop of Sacramento* (2006) 142 Cal.App.4th 759, directly conflict with the holding of the Court of Appeal's Opinion. Petitioner also cautions that the lower

---

[2] The other circumstances justifying review are neither raised by the petitioner, nor applicable to this Petition.

courts of this State will undoubtedly reach a multitude of conflicting decisions as a result of the purported conflict between *Hightower* and the Court of Appeal's decision. Petitioner ignores that there is no certainty any such conflict will ever develop. Instead, petitioner asks this Court to review the Court of Appeal's decision on the off chance a true conflict will arise.

Petitioner also takes liberties with this Court's Opinion in *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201, by implying a holding that is neither expressly stated by this Court, nor supported by its reasoning. In *Shirk*, this Court was called upon to determine the relatively narrow question of how public entity defendants were affected by the 2002 amendments to section 340.1. In answering that question, this Court held that the 2002 amendment to section 340.1, subdivision (c), revived claims against private litigants which had been barred by previously applicable statutes of limitations, but did not extend to public entity defendants since the statute did not expressly revive claims that had been barred by the government claims statute. This Court did not discuss the impact of the 1998, 1999 and 2002 amendments to section 340.1 on non-public entity defendants like petitioner.

Notably, the Court of Appeal cited *Shirk*'s discussion of the evolution of section 340.1, and was plainly aware of the opinion but did not

find the case to stand for the sweeping proposition urged by the petitioner. Nor is the Court of Appeal alone in this sentiment. In *K.J. v. Arcadia Unified School District* (2009) 2009 Cal.App.LEXIS 487, the court found that the delayed discovery provision of section 340.1, subdivision (a), establishes the date of accrual for an adult plaintiffs' claim resulting from childhood sexual abuse. *K.J.*, 2009 Cal.App.LEXIS *20-22. The *K.J.* court cited *Shirk* on numerous occasions, but like the Court of Appeal below, declined to read the opinion as broadly as the petitioner urges.

Without claiming that the Court of Appeal's analysis results in any conflict, petitioner nonetheless claims the Court erred by relying on cases interpreting section 340.2, which provides an extended statute of limitations for claims resulting from exposure to asbestos. The evolution of that statute has been extensively examined by the courts of appeal, as well as this Court, and provides an uncanny parallel to the recent history of amendment to section 340.1. The Court of Appeal appropriately analyzed the expansion of the remedial statute of limitations codified in section 340.1 in a manner that is consistent with the closely analogous circumstances of section 340.2 as previously examined in *Nelson v. Flintkote* (1985) 172 Cal.App.3d 727, and *Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1138.

Finally, petitioner argues the Court of Appeal incorrectly interpreted

section 340.1 in contravention of settled legal principles relating to the retroactive application of statutes of limitations. In this petitioner fails to recognize that there is a sizable legal distinction between applying a statute retroactively to revive a time-barred claim and applying a statute prospectively to a claim that has already been revived by prior legislation. Since plaintiffs' claims were revived in 1999, and did not accrue under the terms of section 340.1 until after the 2002 amendment became effective, their claims were entitled to the benefit of the procedural changes made by that amendment in accordance with settled principles relating to the prospective application of procedural statutes.

None of petitioner's contentions establish a legitimate conflict in need of resolution by this Court. For these reasons, review of the Court of Appeal's Opinion is neither necessary nor appropriate.

II. FACTUAL AND PROCEDURAL BACKGROUND

The instant action was commenced in the Superior Court of Alameda County in 2007 by six brothers who were repeatedly sexually abused by a trusted Catholic priest. (Opinion at 2.) The plaintiffs were sexually abused between 1972 and 1973, but due to the nature of the abuse and psychological coping mechanisms resulting therefrom, they did not discover that the abuse resulted in adult-onset psychological injuries until 2006.

(Opinion at 2.)

Petitioner demurred, alleging the plaintiffs' claims expired in accordance with the statute of limitations in effect at the time of the molestation in the late 1970s or early 1980s. Petitioner claimed the plaintiffs' claims were revived and could have been filed during the 2003 calender year in accordance with the 2002 amendment to section 340.1, subdivision (c), which revived claims against non-perpetrator defendants resulting from childhood sexual abuse that were then time-barred. Petitioner argued the plaintiffs did not commence an action during the 2003 calender year, which resulted in their respective claims becoming forever time-barred.

In response, plaintiffs argued their claims were timely commenced in accordance with delayed discovery provisions of section 340.1, subdivisions (a) and (b)(2). These provisions, enacted in 2002, provide that victims of childhood sexual abuse may commence actions against a third party defendants with notice of the perpetrator's prior sexual abuse of children, at any time within three years of the date the victim discovers the abuse resulted in adult-onset injuries. Cal. Code Civ. Proc. § 340.1, subds. (a)(2), (b)(2).

The trial court accepted petitioner's position and sustained its

demurrer with leave to amend. (Opinion at 2.) Plaintiffs filed an amended complaint, and petitioner again demurred. (Opinion at 2.) The trial court sustain the demurrer to plaintiffs' First Amended Complaint without leave to amend and dismissed plaintiffs' action. (Opinion at 3.) Division Four of the First District Court of Appeal reversed the decision of the trial court, finding that the statutory delayed discovery provision of section 340.1, subdivisions (a)(2) and (b)(2), applied to plaintiffs' claims; which were timely commenced in accordance therewith.

III. THE COURT OF APPEAL USED WELL-ACCEPTED PRINCIPLES OF STATUTORY CONSTRUCTION TO REACH ITS CONCLUSION

In reaching its decision, the Court of Appeal utilized well-worn tools of statutory construction to ascertain and effectuate the intent of the Legislature when it enacted and amended section 340.1. (Opinion at 3; citing *Bodell Construction Co. v. Trustees of Cal. State University* (1998) 62 Cal.App.4th 1508, 1515-16; *see also Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543; *Shirk*, 42 Cal.4th at 211; *People v. Yartz* (2005) 37 Cal.4th 529, 537; *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871; *Young v. Haynes* (1986) 41 Cal.3d 883, 894; *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 51; *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified School District* (1978) 21 Cal.3d 650, 658.)

The Court of Appeal began its analysis by reviewing the plain language of the statute. (Opinion at 3, citing *Bodell*, 62 Cal.App.4th at 1515-16; *see also Shirk*, 42 Cal.4th at 211; *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 625; *Phelps v. Stostad* (1997) 16 Cal.4th 23, 32; *Palos Verdes Faculty Assn.*, 21 Cal.3d at 658.) In doing so, the Court concluded that the 1998 and 1999 amendments to section 340.1 extended the statute's reach to non-perpetrator defendants; applied to all claims filed after January 1, 1999, including those "which would have been barred by the laws in effect prior to January 1, 1999;" and, provided that such revived claims do not accrue, and the statute of limitations does not begin to run, until the plaintiff discovers the cause of his or her adulthood trauma. (Opinion at 5, 8).

The Court of Appeal concluded that, because Plaintiffs' claims were revived in 1999 and did not accrue under section 340.1 until 2006 when they discovered the cause of their respective adult-onset injuries, the claims were not barred by any previous statute of limitations, and were instead timely commenced under the statute in effect at the time of the filing of the action. (Opinion at 8-9.) In so finding, the Appellate Court applied accepted principles relating to the prospective application of procedural statutes. *See Andonagui v. May Department Stores Co.* (2005) 128

Cal.App.4th 435, 440, citing *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465; *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468; *Thompson v. City of Shasta Lake* (E.D. Cal. 2004) 314 F.Supp.2d 1017, 1024.

Although the Court of Appeal found the plain language of section 340.1 directed the result, the Court correctly looked to the legislative history of the statute for additional support. (Opinion at 12, citing *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 697; *see also Panzados v. Superior Court* (1997) 60 Cal.App.4th 324, 326.) In that regard the Court of Appeal was instructed by the Legislature's example, given numerous times throughout the legislative process, of:

> a 35-year old man with a 13-year old son involved in many community and sporting events, [who] may begin to relive his nightmare of being molested by an older authoritarian figure when he was 13 years old and about to enter puberty. While a lawsuit against the perpetrator is possible, that person may be dead, may have moved away to places unknown, or may be judgment-proof. However, any lawsuit against a responsible third party is absolutely time-barred after the victim passes his 26th birthday. This arbitrary limitation unfairly deprives a victim from seeking redress, and unfairly and unjustifiably protects responsible third parties from being held accountable for their actions that caused injury to victims. (citing Assem. Floor Analysis of Sen. Bill 1779 (2001-2002 Reg. Sess.) as amended June 17, 2003, pp. 3-4.)[3]

---

[3] In *Doe v. City of Los Angeles*, this Court also recognized the Legislature's intent to alleviate the effects of a previous iteration of section 340.1 requiring actions to be commenced prior to a plaintiff's twenty-sixth birthday by citing the same statement of legislative intent. 42 Cal.4th at 544

The Court of Appeal also recognized the Assembly Judiciary Committee's understanding of the amendment that "[p]eople who discover their adulthood trauma from the molestation after the effective date of the bill will have three years from the date the victim discovers or reasonably should have discovered that the adulthood trauma was caused by the childhood abuse." (Opinion at 13, citing Assem. Com. On Judiciary, Background Information Worksheet on Sen. Bill 1779 (2001-2002 Reg. Sess.) p. 0.)

In keeping with this discussion of legislative history, the Court of Appeal understood that "the primary purpose of the 2002 amendments was to ameliorate the harsh result of a statute of limitations which precluded victims from recovering any compensation from the most highly culpable of the responsible third parties . . . It would not effectuate this legislative intent to read the amendments as re-imposing the same harsh result on an entire class of victims over the age of 26 who did not discover the cause of their injury until after January 1, 2004, and therefore could not have filed their actions during 2003." (Opinion at 13-14.) Thus, the Court of Appeal determined that the legislative history of the 2002 amendment to section

---

(citing Assem. Floor Analysis of Sen. Bill 1779 (2001-2002 Reg. Sess.) as amended June 17, 2003, pp. 3-4.)

340.1 supported its reading of the plain language of the statute and compelled the result it reached.

The Appellate Court also appropriately considered the overarching purpose of section 340.1 "to expand the ability of victims of childhood sexual abuse to sue those responsible for the injuries they sustained as a result of that abuse" (Opinion at 4, 9, citing *In re Travis W.* (2003) 107 Cal.App.4th 368, 371; *see also Dyna-Med, Inc. v. Fair Employment Housing Commission* (1987) 43 Cal.3d 1379, 1387; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) The Court also looked to the objective to be achieved by the statute and its history of expansive amendment, as well as the evils to be remedied by the legislation. (Opinion at 14, citing *Wotton v. Bush* (1953) 41 Cal.2d 460, 467; *see also Walters v. Weed* (1988) 45 Cal.3d 1, 10; *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587; *Panzados*, 60 Cal.App.4th at 326-27; *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 688.)

Through this analysis, the Court of Appeal concluded the plain language of section 340.1 compelled a finding that the plaintiffs complied with the statute of limitations; supported that interpretation with reference to the legislative history of the most recent amendment to section 340.1; harmonized its understanding of section 340.1 with the statute's

overarching purpose and history of expansive amendment, and; determined that any other ruling would fail to meet the Legislature's concerns in remedying the evils addressed by the statute. In so finding, the Court of Appeal used appropriate tools to ascertain and effectuate the intent of the Legislature and correctly applied that divined intent to plaintiffs' claims. This unremarkable analytic approach does not call out for this Court's review.

IV. PETITIONER'S PURPORTED CONFLICT BETWEEN THE COURT OF APPEAL'S OPINION AND *HIGHTOWER* IS ILLUSORY AND DOES NOT JUSTIFY REVIEW

Petitioner seeks to justify review of the Court of Appeal's decision by championing an illusory conflict between the holding of the Court of Appeal, and statements made in dicta in *Hightower*, 142 Cal.App.4th 759. Petitioner also outlandishly predicts anarchy in the judicial system if review is denied and asks this Court to settle potential conflicts which may never come to pass. To accept these positions is to ignore decades of established authority describing the precedential effect of published appellate decisions and to speculate as to whether an actual, concrete, conflict may arise at some later time.

It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court. *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680. As a result, "only statements necessary

to the decision are binding precedents." *Gogri v. Jack in the Box, Inc.* (2008) 166 Cal.App.4th 255, 272. Supplementary or explanatory comments contained within an opinion are not given precedential weight. *Id.* As a result, it has long been held that "[A]n appellate decision is not authority for everything said in the court's opinion, but only for the points actually involved and actually decided." *People v. Evans* (2008) 44 Cal.4th 590, 599 (internal quotations omitted); *see also Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.

In *Hightower*, the pro per plaintiff alleged that he had been sexually abused for two years beginning in 1970, when he was twelve years of age. 142 Cal.App.4th at 761. The plaintiff acknowledged that he attempted to report the abuse to "officials" in 1975, and conceded that he discovered the abuse resulted in adulthood psychological trauma by 1982, at the latest. *Id.* at 768. Notably, "[n]owhere does [Hightower] allege that he did not discover his psychological injuries were caused by sexual abuse until some more recent time, and he offers no factual basis for such an assertion." *Id.*

Since the *Hightower* Court had no occasion to consider the impact of the 2002 amendments to section 340.1 on a plaintiff who did not discover the cause of his injuries until after the amendment became effective, any language in its opinion purporting to address that question should be

understood as dicta and not as a direct holding.[4] For this reason, *Hightower* has no precedential effect as to a claim where the plaintiff did not discover the cause of his adulthood injuries until after the 2002 amendment to section 340.1 became effective.

Review is not necessary to reconcile these opinions concerning two materially different factual circumstances.

V. THE DECISION OF THE COURT OF APPEAL IS IN HARMONY WITH THIS COURT'S DECISION IN *SHIRK v. VISTA UNIFIED SCHOOL DISTRICT*

Petitioner claims that in *Shirk*, this Court emphatically declared section 340.1 does not provide a second accrual of a cause of action resulting from childhood sexual abuse against a non-public entity defendant and expressly "rejected the arguments that a cause of action for sexual molestation can accrue more than once." (Petition at 9.) According to petitioner, the Court of Appeal flaunts that holding by ignoring *Shirk* and instead finding the 1998 and 1999 amendments to section 340.1 provide that a claim accrues upon discovery of the cause of adulthood psychological

---

[4] Of note, if the facts of *Hightower* were analyzed under the Court of Appeal's Opinion, the result for Mr. Hightower would not change. Mr. Hightower's claim would be dismissed as untimely, since he did not, and could not, allege that he discovered the cause of his adulthood trauma after the effective date of the 2002 amendment to section 340.1. These cases do not conflict.

injuries. Petitioner's position blatantly exaggerates the scope of this Court's decision in *Shirk*, and extrapolates a holding that is neither expressly stated by this Court, nor capable of implication from its reasoning.

In *Shirk*, this Court solely addressed the question of how public entity defendants must be treated under the recent amendments to section 340.1. There, the plaintiff was sexually abused by her English teacher when she was fifteen years of age and attending a public high school. *Id.* at 205. The plaintiff discovered that the abuse had resulted in adult-onset injuries on September 12, 2003; presented a tort claim to the defendant School District on that date; and filed her complaint on September 23, 2003, when she was forty-one years of age. *Id.* at 205-06. The plaintiff argued that her claim was timely-filed in accordance with the revival provision of section 340.1(c), or, alternatively, her obligation to file a tort claim did not arise until she discovered the cause of her adulthood injuries. *Id.* at 210-11.

This Court determined that "the Legislature's amendment of section 340.1, subdivision (c), revived for the year 2003 certain lapsed causes of action against *non-public entities*, but that nothing in the express language of those amendments or in the history of their adoption indicates an intent by the Legislature to apply against *public entity defendants* the one-year

revival provision for certain causes of action. *Id.* at 212-213 (italic emphasis in original.) This Court reasoned that section 340.1, subdivision (c) "makes no reference whatsoever to any revival of the period in which to present a claim under the government claims statute," and found that "[h]ad the Legislature intended to also revive in subdivision (c) the claim presentation deadline under the government claims statute, it could easily have done so." *Id.* at 212, 213.

The same rationale applies to the revival of claims under the delayed discovery provision of section 340.1, subdivision (a). The 1998 and 1999 amendments to section 340.1 revived previously time-barred claims and established a new accrual date for such actions, but did not include direct language reviving a plaintiff's ability to present a new tort claim. As a result, a claim against a public entity that was barred by the plaintiff's failure to present a claim under the government claims statute at the time of the abuse remained barred even after claims against private litigants were revived.[5] This Court did not - - as advanced by the Petitioner - - determine

---

[5] Thus, the original accrual of a claim - - occurring when the abuse took place or when the plaintiff discovered the wrongfulness of the touching - - is identical for both public and non-public entity defendants. *See Shirk*, 42 Cal.4th at 217; *Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405; *Evans v. Eckelman* (1990) 216 Cal.App.3d 1609. However, without an express legislative declaration that the second, statutorily-created,

that a claim against a non-public entity cannot accrue twice as provided in section 340.1.

Petitioner correctly points out that the Court of Appeal cited *Shirk* for an unrelated proposition in its Opinion. (Opinion at 18.) Petitioner also recognizes that *Shirk* was discussed at the oral argument of the instant action. (Opinion at 18.) That the Appellate Court did not apply *Shirk* as urged by the petitioner does not, as advocated in the Petition for Review, indicate the Court ignored the plain holding of *Shirk*. Instead, the Court of Appeal simply declined to adopt petitioner's extremely broad interpretation of the opinion. Nor is the Court of Appeal alone in disagreeing with petitioner about the scope of *Shirk's* holding.

In *K.J. v. Arcadia Unified School District*, the Second District Court of Appeal cited *Shirk* extensively in determining when an adult victim of childhood sexual abuse's claim accrued for purposes of the government claims statute.[6] Despite the court's obvious awareness of the *Shirk* opinion, the court did not agree with petitioner that section 340.1 does not define the

---

accrual applies against public-entities, the statute must be interpreted as applying only to private defendants. *See Shirk*, 42 Cal.4th at 213-214.

6

K.J. does not conflict with this Court's ruling in *Shirk* since the plaintiff in *K.J.* was sexually abused while the current version of section 340.1 was in effect. Thus the timeliness her claim did not depend upon being revived by section 340.1.

accrual of an adult victim's claim for adult-onset injuries. Instead, the court determined that pursuant to section 340.1 the adult plaintiff's claim accrued when she discovered the cause of her adulthood injuries. *K.J.*, 2009 Cal.App.LEXIS, at *20-22.

The Court of Appeal's opinion, as to the non-public entity defendant in the instant case, presents no affront to the dichotomy between public entity defendants and non-public entity defendants described by this Court in *Shirk*.

VI. THE COURT OF APPEAL'S ANALYSIS OF SECTION 340.1 IS CONSISTENT WITH OTHER CASES INTERPRETING SIMILAR STATUTES

Notwithstanding the extremely analogous statutory structure presented by section 340.2, petitioner faults the Court of Appeal for looking to cases interpreting that statute for guidance, claiming such reliance "creates confusion in the law because it ignores and contradicts this Court's holding in *Shirk*." (Petition at 19.) However, giving section 340.1 a plain reading creating a second accrual as to non-public entity defendants is entirely consistent with *Shirk* as well as this Court's ruling in *Hamilton*.

Prior to the enactment of section 340.2, claims for latent injuries resulting from exposure to asbestos accrued when the plaintiff discovered the cause of his injuries. *Velasquez v. Fireboard Paper Products Corp.*

(1979) 97 Cal.App.3d 881, 887-88. The Legislature changed the date of accrual when it codified section 340.2 which provided that the statute of limitations for such injuries did not commence to run until the plaintiff experienced disability, which the statute described as "loss of time from work as a result of such exposure which precludes the performance of the employee's regular occupation." *Hamilton*, 22 Cal.4th 1138. In *Nelson*, 172 Cal.App.3d 727, the court determined that although a claim had accrued several years before 340.2 took effect and had been barred by the then-applicable statute of limitations, the plaintiff nonetheless received the benefit of the new rules for accrual under section 340.2.

The same analysis follows for section 340.1, where, prior to the enactment of the statute, claims accrued either at the time of the abuse or upon discovery of the wrongfulness of the touching. *Evans*, 216 Cal.App.3d 1609. Section 340.1 was then enacted, specifying that accrual under the statute does not occur when damage is first experienced, or the wrongful nature of the touching is first ascertained - each of which may occur while the plaintiff is still a minor. Instead, accrual under section 340.1 is tied to an altogether different event - discovery that the abuse resulted in adult-onset injuries. Since the standard for accrual under section 340.1 is completely distinct from the prior standard, the Court of Appeal

correctly followed the analysis of *Nelson* when it found that "the fact that prior limitations periods may have expired before section 340.1, subdivision (b)(2)'s more liberal discovery rule became effective and before any complaint was filed does not bar plaintiffs' action, because discovery of the cause of plaintiffs' psychological injuries had not yet occurred." (Opinion at 11.)

The Court of Appeal correctly looked to the analogous statutory scheme of section 340.2 for guidance in determining the effects of the recent amendments to section 340.1.

VII. THE *KRUPNICK* LINE OF CASES CITED BY PETITIONER BEARS ABSOLUTELY NO RELATION TO THE ISSUES ADDRESSED BY THE COURT OF APPEAL

Petitioner argues that "the Court of Appeal's holding - - set forth at the outset of the opinion - - that the applicable statute of limitations is the one 'in effect at the time a claim is filed' would mean that all amendments to or enactments of statutes of limitations are retroactive and apply to all claims filed after their effective date, even if they were previously time-barred." (Petition at 5.) This argument forcibly wrenches the Court of Appeal's holding from context; greatly exaggerates the effect of the Court of Appeal's opinion; and attempts to compare apples to oranges by equating the prospective application of the statute of limitation applied by the Court

of Appeal to clearly retroactive applications of statutes of limitations in other contexts.

It is well settled law that "[a] statute is not made retroactive merely because it draws upon facts existing prior to its enactment. Thus changes in procedural law have been held applicable to existing causes of action. The effect of such statutes is actually prospective in nature since they relate to the procedure to be followed in the future."[7] *Strauch v. Superior Court* (1980) 107 Cal.App.3d 45, 48-49. This Court has therefore noted that "it is a misnomer to designate such statutes as having retrospective effect." *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 231, citing *Elsner v. Uveges* (2004) 34 Cal.4th 915, 936.

This rule has particular application to statutes enlarging or altering previously-existing statutes of limitations. "A new statute that enlarges a statutory limitations period applies to actions that are not already barred by the original limitations period at the time the new statute goes into effect."

---

[7] "[A] statute of limitations is *procedural*; it affects the *remedy* only, not the substantive right or obligation." (Opinion at 11, citing *Nelson*, 172 Cal.App.3d at 732.) "A statute which is procedural in nature may be given effect as to pending and future litigation even if the event underlying the cause of action occurred before the statute took effect." (Opinion at 11, citing *Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1138-1145; *Nelson*, 172 Cal.App.3d at 733.)

Andonagui, 128 Cal.App.4th at 440, citing *Douglas Aircraft Co.*, 58 Cal.2d at 465; *Mudd*, 30 Cal.2d at 468; *Thompson*, 314 F.Supp.2d at 1024. The Court of Appeal's position tracks with these authorities. Since plaintiffs' claims were revived by section 340.1 in 1999, and did not accrue under the terms of that statute until 2006, there is no question of any retroactive application as raised in *Krupnick v. Duke Energy* (2004) 115 Cal.App.4th 1026, and the other cases cited by petitioner.[8]

Instead, the Court of Appeal dutifully applied the rule governing prospective application of statutes of limitation when it held that the enlarged statute of limitations applied prospectively to any claim that had not yet accrued under the terms of section 340.1 when the 2002 amendment to that statute took effect, i.e. where the plaintiff had not discovered the cause of his or her adulthood injuries.

---

[8] If language of retroactivity were required, it is found in the Legislature's re-enactment of the retroactive language of section 340.1, subdivision (u), in 2002. That provision carried forward the retroactive effect of subdivision (a).

VIII. CONCLUSION

Petitioner has not established a legitimate need for review of the Court of Appeal's decision. The Court properly analyzed the plain language or section 340.1, its legislative history, the purpose of the statute, the evils to be remedied, its history of expansive amendment and the statute's remedial nature in seeking to ascertain and effectuate the intent of the Legislature. Using these accepted tools, the Court of Appeal determined that the Legislature intended victims of childhood sexual abuse like the plaintiffs, who did not discover that the abuse resulted in adult-onset injuries until after January 1, 2003, to utilize the statutory delayed discovery rule to hold responsible entities responsible for their conduct.

In so ruling, the Court of Appeal properly applied oft-cited legal principles relating to the prospective application of procedural statutes and looked for guidance to cases, including this Court's decision in *Hamilton*, interpreting the analogous statutory scheme of section 340.2. The Court of Appeal was mindful of this Court's opinion in *Shirk* and ruled in a manner consistent with this Court's analysis. Finally, the Court of Appeal's decision applied section 340.1 to a materially different set of facts that the previous decision of the Second Appellate District in *Hightower*, and both the plain language of section 340.1, and its legislative history justified a

different result.

The Court of Appeal's Opinion does not conflict in any meaningful way with other authorities; rendering review unnecessary.

Respectfully submitted,

ZALKIN & ZIMMER, LLP

Dated: April 9, 2009

Devin M. Storey
Attorneys of Plaintiffs/Respondents

CERTIFICATE OF COMPLIANCE

This brief is reproduced using a proportional typeface of 13 points in size, consists of 5203 words, and therefore conforms to the requirements set forth in Rule 8.504(d) of the California Rules of Court.

Respectfully submitted,

Dated: April 9, 2009

Devin M. Storey

Case No: 171382
Terry Quarry, et al. v. Defendant Doe 1, Diocese
Court of Appeal, First Appellate District, Division 4
Case No: A120048
Superior Court - County of Alameda
Case No. HG 07313640

PROOF OF SERVICE

I, **Lisa E. Maynes,** declare that: I am over the age of 18 years and not a party to the action; I am employed in, or am a resident of the County of San Diego, California; where the mailing occurs; and my business address is 12555 High Bluff Drive, Suite 260, San Diego, California 92130. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following document(s): by placing a true and correct copy in a separate envelope for each addressee respectively as follows: **PLAINTIFFS AND RESPONDENTS ANSWER TO PETITION FOR REVIEW**

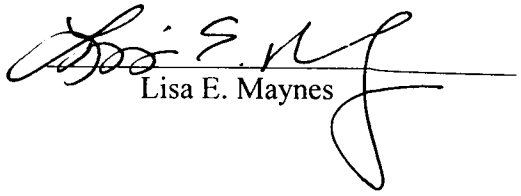
____ BY U.S. MAIL: By placing a true copy of the above-listed document(s) in a separate envelope addressed to each addressee, respectively, as indicated above on the date below. It is deposited with the United States Postal Service on the same day.

___ BY PERSONAL SERVICE: I placed a true copy of the above-listed document(s) in a separate envelope addressed to each addressee, respectively, as indicated above and had such envelope personally delivered to the offices of the addressee on the date below.

_X_ BY FEDERAL EXPRESS OR OVERNIGHT COURIER

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

Dated: April 9, 2009



Lisa E. Maynes

MAILING LIST

1 Copy
Stephen A. McFeely, Esq.
Tami S. Smason, Esq.
Foley & Lardner, LLP
555 S. Flower Street, Suite 3500
Los Angeles, CA 90071
Tel: 213/972-4500
Fax: 213/486-0065
Attorneys for Defendant and Respondent
Defendant Doe 1, Diocese

1Copy
Clerk of the Court
Court of Appeal, First Appellate District
Division 4
350 McAllister Street
San Francisco, CA 94102

1Copy
Superior Court of California
The Honorable Kenneth Mark Burr
U.S. Post Office Building
201 Thirteenth Street, Dept. 30
Oakland, CA 94612

Original plus 13 copies
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102