

S 176483

Case No. S _____

IN THE SUPREME COURT OF CALIFORNIA

**L.A.,
Plaintiff and Appellant,
vs.
THE ROMAN CATHOLIC BISHOP OF STOCKTON, et al.,
Defendant and Respondent.**

**After the Decision of the Court of Appeal
Third Appellate District
APP. NO. C057895
San Joaquin Superior Court Case No. CV031343
Honorable Judge Leslie D. Holland**

PETITION FOR REVIEW

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**SUPREME COURT
FILED**

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Deputy

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TABLE OF CONTENTS

	<u>Page</u>
<u>TABLE OF CONTENTS</u>	i
<u>TABLE OF AUTHORITIES</u>	iii
I. <u>INTRODUCTION</u>	1
II. <u>QUESTIONS PRESENTED</u>	5
III. <u>NECESSITY FOR REVIEW</u>	6
IV. <u>FACTUAL AND PROCEDURAL BACKGROUND</u>	8
A. <u>FACTUAL BACKGROUND</u>	8
B. <u>PROCEDURAL HISTORY</u>	8
V. <u>ARGUMENT</u>	9
A. <u>THE STATUTE OF LIMITATIONS IN 340.1(a) DOES NOT BEGIN TO ACCRUE FOR A PLAINTIFF THAT REPRESSED MEMORY OF SEXUAL ABUSE UNTIL WITHIN THREE YEARS OF THE DATE THE PLAINTIFF DISCOVERS OR REASONABLY SHOULD HAVE DISCOVERED THAT THE ABUSE WAS THE CAUSE OF ADULTHOOD PSYCHOLOGICAL INJURY OR ILLNESS</u>	9
1. <u>The LA Opinion is Contrary to the Legislative Intent Underlying the Enactment of SB1779</u>	12
B. <u>THE COMMON LAW DELAYED DISCOVERY DOCTRINE APPLIES TO REPRESSED MEMORY CASES AND WAS NOT ABROGATED BY THE DELETION OF THE SAVINGS CLAUSE IN THE 1994 AMENDMENTS TO 340.1</u>	15

C. IT IS IMPROPER FOR THE COURT OF APPEAL TO EFFECTIVELY SHORTEN PLAINTIFF’S STATUTE OF LIMITATIONS 19

D. THE PRESENT PETITION MUST BE GRANTED ON THE SAME GROUNDS AS THE PETITION IN THE KJ CASE WAS GRANTED 23

V. CONCLUSION 24

CERTIFICATE OF WORD COUNT 25

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<i>Aronson v. Superior Court</i> 191 Cal.App.3d 294 (1987)	21
<i>Brown v. Bleiberg</i> 32 Cal.3d 426 (1982)	21
<i>Cain v. State Farm Mutual Auto Insurance Co.</i> 62 Cal.App.3d 310 (1976)	16
<i>Coachella Valley Mosquito & Vector District v. California Public Employment Relations Board</i> 35 Cal.4th 1072 (2005)	21
<i>Curtis T. v. County of Los Angeles</i> 123 Cal.App. 4 th 1405 (2004)	16,17
<i>D.D. v. Roman Catholic Bishop of Stockton</i> , (Cal. App. 3d Dist. 2009) 2009 Cal. App. Unpub. LEXIS 6545	3
<i>Evans v. Eckelman</i> 216 Cal.App. 3d 1609 (1990)	11,15,18,20
<i>Fox v. Ethicon Endo-Surgery, Inc.</i> 35 Cal.4 th 797 (2005)	18
<i>Hightower v. Roman Catholic Bishop of Sacramento</i> 142 Cal.App. 4 th 759 (2006)	3,4,6,9
<i>Jolly v. Eli Lilly & Co.</i> 44 Cal.3d 1103 (1988)	16
<i>K.J. v. Roman Catholic Bishop of Stockton</i> (2009) 172 Cal. App. 4 th 1388 (“K.J.”), [review granted, depublished by <i>K.J. v. The Roman Catholic Bishop of Stockton</i> , (Cal., June 24, 2009) 2009 Cal. LEXIS 5886, Stay granted by <i>K.J. v. Roman Catholic</i>	

<i>Bishop of Stockton</i> , (Cal., July 8, 2009) 2009 Cal. LEXIS 7257] 172 Cal.App. 4 th 1388 (2009)	1-3,7,23
<i>L.A. v. Roman Catholic Bishop of Stockton</i> Cal. App. 3d Dist. 2009) 2009 Cal. App. Unpub. LEXIS 6539	1,2,3,6,7,9,12,19,24
<i>Lent v. Doe</i> 40 Cal.App. 4 th 1177 (1995)	10,14
<i>Manguso v. Oceanside Unified School District</i> 88 Cal.App. 3d 725 (1979)	16
<i>Mark K. v. Roman Catholic Archbishop of Los Angeles</i> 67 Cal.App. 4 th 603 (1998)	20
<i>Neel v. Magana, Onley, Levy, Cathcart & Gelfand</i> 6 Cal.3d. 176 (1971)	16
<i>Oakes v. McCarthy Co.</i> 267 Cal.App. 2d 231 (1968)	16
<i>Quarry v. Doe I</i> (2009) 170 Cal. App. 4th 1574 (“ <i>Quarry</i> ”) [Time for Granting or Denying Review Extended <i>Quarry v. Doe I</i> , (Cal., May 6, 2009) 2009 Cal. LEXIS 4702; Review granted, Depublished by <i>Quarry v. Doe I</i> , (Cal., June 10, 2009) 2009 Cal. LEXIS 6463; Later proceeding at <i>Quarry v. Doe I</i> , (Cal., June 26, 2009) 2009 Cal. LEXIS 6766] 170 Cal.App. 4 th 1574 (2009)	2-7,9-16,18,23
<i>Rosefield Packing Co. v. Superior Court</i> 4 Cal.2d 120 (1935)	19,20,21
<i>Ruoff v. Harbor Creek Community Assn.</i> 10 Cal.App.4 th 1624 (1992)	15

STATUTES

<i>Code of Civil Procedure</i> section 340.1	2-15,19, 20,22,24
--	-------------------

RULES OF COURT

California Rule of Court 8.500 1

LEGISLATIVE HISTORY

*Senate Bill 1779, (2001–2002 Reg. Sess.) as amended
May 2, 2002* 5,7,12

*Assembly Committee on Judiciary Analysis
of Sen. Bill No. 1779 (2001–2002 Reg. Sess.)* 13,14

*Assembly Committee on Judiciary Background Information
Worksheet for SB 1779* 13

Assembly Concurrence in Senate Amendments to AB 1651 (1998) 20

TO THE HONORABLE CHIEF JUSTICE OF THE SUPREME
COURT OF CALIFORNIA AND HONORABLE ASSOCIATE JUSTICES
OF THE SUPREME COURT OF CALIFORNIA:

Plaintiff and Appellant *LA* (“Plaintiff” and/or “*LA*”), pursuant to Rules of Court 8.500(b)(1), respectfully petitions this Court for Review following the decision filed by the Court of Appeal of the State of California, Third Appellate District, on August 12, 2009 (“Opinion”), upholding the trial court’s decision to sustain the Demurrer to Plaintiff’s Complaint without leave to amend.

Attached hereto as Exhibit “A” is a true and correct copy of the August 12, 2009, Opinion of the Third Appellate District Court of Appeal.

I.

INTRODUCTION

The Third District Court of Appeal radically deviated from established law and statutory construction when upholding the trial court’s decision to sustain the Demurrer to Plaintiff’s Complaint without leave to amend. In issuing its unpublished opinion in *L.A. v. Roman Catholic Bishop of Stockton*, (Cal. App. 3d Dist. 2009) 2009 Cal. App. Unpub. LEXIS 6539 (“*L.A.*”), the Court of Appeal chose to follow its previous ruling in the case entitled, *K.J. v. Roman Catholic Bishop of Stockton*, (2009) 172 Cal. App. 4th 1388 (“*K.J.*”), [review granted, depublished by *K.J. v. The Roman*

Catholic Bishop of Stockton, (Cal., June 24, 2009) 2009 Cal. LEXIS 5886, Stay granted by *K.J. v. Roman Catholic Bishop of Stockton*, (Cal., July 8, 2009) 2009 Cal. LEXIS 7257], choosing disregard the findings in *Quarry v. Doe 1*, (2009) 170 Cal. App. 4th 1574 (“*Quarry*”) [Time for Granting or Denying Review Extended *Quarry v. Doe 1*, (Cal., May 6, 2009) 2009 Cal. LEXIS 4702; Review granted, Depublished by *Quarry v. Doe 1*, (Cal., June 10, 2009) 2009 Cal. LEXIS 6463; Later proceeding at *Quarry v. Doe 1*, (Cal., June 26, 2009) 2009 Cal. LEXIS 6766], relied upon in Plaintiff’s moving papers, as well as the clear statutory language contained in *Cal. Code Civ. Proc.* § 340.1 (a).¹

Appellant acknowledges that the above-noted *Quarry* and *KJ* decisions were depublished due to grant of review and consideration by the Supreme Court, and as such does not rely upon such for their precedential value. Plaintiff, however, references them because they provide grounds for the present Petition—the ultimate decision of the Supreme Court with respect to the *Quarry* and *KJ* cases will directly bear upon the present matter and ruling. Further, Plaintiff has referenced the decisions because the Appellate Court referenced them in making its ruling in the present *LA* action, noting

¹

Unless otherwise stated, all undesignated statutory references herein are to the *California Code of Civil Procedure*.

in its ruling:

“Our opinion in *D.D.* [a separate appeal with respect to the same issues, argued and considered by the Appellate Court at the same time as *LA*], which we are filing contemporaneously with this decision, governs the disposition of this appeal. We shall therefore affirm the judgment for the reasons set forth in that case.” (*L.A. v. Roman Catholic Bishop of Stockton*, (Cal. App. 3d Dist. 2009) 2009 Cal. App. Unpub. LEXIS 6539.

In the referenced *D.D.* case, the Appellate Court notes:

“We acknowledge the applicability of the delayed discovery doctrine to claims such as plaintiff’s, either through common law theories of delayed accrual or through section 340.1, subdivision (1), is now pending before the California Supreme Court, which has granted review in two cases, including one from this district. (*Quarry v. Doe I* (2009) 170 Cal.App.4th 1574, review granted June 10, 2009, S171382 [briefing pending]; *K.J. v. The Roman Catholic Bishop of Stockton* (2009) 172 Cal.App.4th 1388, review granted June 24, 2009, S173042 [further briefing deferred pending disposition in *Quarry v. Doe I*].” (*D.D. v. Roman Catholic Bishop of Stockton*, (Cal. App. 3d Dist. 2009) 2009 Cal. App. Unpub. LEXIS 6545, footnote 3).

Both *Quarry* and § 340.1 (a) clearly afford *LA* three years to file her complaint from the date she discovers or reasonably should have discovered that psychological injury or illness occurred and was caused by the sexual abuse she suffered. The Court of Appeal disregarded the teaching of these cases, applying factually distinguishable law from *Hightower v. Roman Catholic Bishop of Sacramento*² (“*Hightower*”), 142 Cal. App. 4th 759

²

The Court, in *Hightower*, reasoned that, because the Plaintiff alleged in his

(2006), with the result of depriving *LA* of her due process rights.

Further, the Court of Appeal failed to discuss the threshold question of whether the delayed accrual provision of section 340.1 could be prospectively applied to render *LA*'s action timely. *Quarry* is instructive, finding that Section 340.1(a) may be applied prospectively as *LA*'s action had not yet accrued prior to the statutory enactment of the revival window. *Quarry*, 170 Cal App 4th, at 1587.

There is, thus, a clear conflict of law that has deprived *LA* of her due process rights. In formulating its Opinion, the Court of Appeal dismissed

Complaint that he tried to report his sexual abuse to "officials" as early as 1975, he had always known of the physical injury he had suffered at that time, thus, his causes of action for sexual abuse accrued at the time they occurred, and pursuant to the applicable statute of limitations at the time his cause of action accrued, his claim lapsed in 1977. (*Id* at 767-768.)

The Plaintiff in *Hightower* alleged that he had always been aware of the sexual abuse he suffered. As such, his claims for sexual abuse accrued at the time he was abused. Using that threshold determination to calculate his statute of limitations period, the Court determined that Plaintiff Hightower's claim was time barred as of the time of the 2002 Amendment to section 340.1, and he did not take advantage of the open filing window period of calendar year 2003.

Here, however, Plaintiff alleged she immediately repressed any and all memory of the sexual abuse he suffered at the hands of DOE 4. *See* Opinion at pages 2 and 4. Further, she alleged she did not recover said memory until December 20, 2004. (*Id.*) As such, the date of accrual of her causes of action for sexual abuse is December 20, 2004—Plaintiff's claims for sexual abuse were not time barred as of the date of the 1990 and 1998 amendments to section 340.1, that added the "delayed discovery" provision—thus, not only does the *Hightower* decision fail to support Bishop's position, it demonstrates that Plaintiff is fully entitled to avail herself of the current "delayed discovery" provision of current section 340.1.

Plaintiff's action with prejudice for failing to comply with the statute of limitations. Similar to *Quarry*, Plaintiff's action was, in fact, timely under Section 340.1(a). By granting review of the Opinion, this Court would avert the possibility of such a miscarriage of justice.

Further, the Court of Appeal's Opinion frustrates the stated intent of the California Legislature by categorically preventing individuals who repressed their memory of sexual abuse suffered as children, and adulthood psychological injuries, until after the enactment of SB 1779, from pursuing an action, thereby making it impossible for such victims of sexual abuse to hold wrong-doers responsible for their actions. Review by this Court is therefore necessary not only to ensure uniformity of decision-making in this important area, but to achieve the expressed intent of the California Legislature to make it easier for victims of childhood sexual abuse to have their day in Court.

II.

QUESTIONS PRESENTED

1. Does *Code of Civil Procedure* Section 340.1, subdivision (a), as amended in 2002 by SB1779, function together with subdivision (b)(2), to delay accrual of Plaintiffs' claims resulting from childhood sexual abuse against a non-perpetrator defendant, to within three years after Plaintiff discovers the cause of his or her adulthood trauma regardless of the date of

abuse so as to apply the statute prospectively to any claim that had not accrued prior to the amendments' effective date?

2. Was the Common Law Delayed Discovery Rule Abrogated by the 1994 Amendments to *Code of Civil Procedure* Section 340.1?

3. Is it appropriate for the Court of Appeal to shorten a statutory limitations period which would act to immediately divest a plaintiff of an existing right of action?

III.

NECESSITY FOR REVIEW

Review of the Opinion of the Court of Appeal is necessary to secure uniformity of law in this quickly evolving area. The *LA* opinion prevents this Court from addressing the question of the application of § 340.1(a) with a clean canvas. As evidenced by the *LA* opinion, the Appellate Court refused to even substantively reference *Quarry* in its Opinion, deferring to the distinguishable law contained in *Hightower*. The conflict of law in this area must be resolved, otherwise *LA* and hundreds of other similarly situated plaintiffs will continue to suffer with the uncertainty that their claims could be dismissed even though timely filed, based only on the venue in which they live. Review of the Opinion is necessary to prevent such an injustice.

The *LA* opinion also offends the Legislature's broad intent to provide

victims of childhood sexual abuse access to the courts. The Court of Appeal's restrictive reading of § 340.1 excludes a distinct class of victims of childhood sexual abuse while providing a remedy to all others.

Molestation victims who were over the age of 26, but had repressed their memory of abuse and not yet made a causal connection between the abuse and their adulthood injuries as of the date of the enactment of SB 1779 are left with no recourse under *LA*, while every other victim has the opportunity to hold responsible third parties accountable for their actions.

The *LA* opinion must also be reviewed in order to rectify a conflict among the various Courts of Appeal as to the proper interpretation and application of the accrual provision of § 340.1(a).

Further, review of the opinion must be granted based upon the currently-pending petitions in the *Quarry* and *KJ* cases, which deal with the exact same statute of limitations for childhood sexual abuse actions issue.

In a single broad stroke, the Court of Appeal has imposed an excessively restrictive reading of § 340.1(a), in direct contravention of existing case law, clear legislative intent, public policy and common sense. This Court should not allow this Opinion to stand uncorrected.

In light of the *LA* opinion's conflict with previously published appellate authority and contravention of the Legislature's stated intent, this Court should grant review.

IV.

FACTUAL AND PROCEDURAL HISTORY

A. Factual Background

Plaintiff, *LA*, alleges, in her Complaint, that she was sexually abused and molested by Doe 6, a priest and agent of Defendant, The Roman Catholic Bishop of Stockton (Bishop) when she was between the ages of seven and nine. *Opinion* at page 2.

The Bishop condoned the misconduct and protected Doe 6, despite the knowledge that Doe 6 was a chronic child molester. *Ibid.* Plaintiff “immediately repressed” all memory of the acts of molestation at the time they occurred and had no memory of them. *Id* at page 2. On December 20, 2004, Plaintiff began recovering her memory of the sexual abuse perpetrated upon her by Doe 6, when she connected it to her current psychological problems. *Id.* The underlying complaint was filed on December 6, 2006. *Id.*, at page 3.

B. Procedural History

The Bishop demurred to the Complaint, asserting that because Plaintiff's childhood sexual abuse claims had lapsed under then applicable statutes of limitations and were not brought within the one-year revival window provided for in the 2002 amendment to section 340.1, they were untimely. *Id.*, at page 3. Plaintiff maintained that her claims were governed

by the “delayed discovery” rule of section 340.1, subdivision (a) so that it was timely if brought within three years of the date she reasonably should have discovered that his adult psychological injury was caused by the childhood sexual abuse. *Id.*, at page 3-4.

The trial court, relying on the decision in *Hightower*, sustained the demurrer without leave to amend. *Id.* Plaintiff appealed from the final judgment of dismissal. *Id.* On August 12, 2009, the Court of Appeal issued its Opinion affirming the decision of the trial court. Plaintiff seeks review from this Court to avert a great miscarriage of justice and resolve the conflicting law as between *LA* and *Quarry*.

V.

ARGUMENT

- A. **THE STATUTE OF LIMITATIONS IN 340.1(a) DOES NOT BEGIN TO ACCRUE FOR A PLAINTIFF THAT REPRESSED MEMORY OF SEXUAL ABUSE UNTIL WITHIN THREE YEARS OF THE DATE THE PLAINTIFF DISCOVERS OR REASONABLY SHOULD HAVE DISCOVERED THAT THE ABUSE WAS THE CAUSE OF ADULTHOOD PSYCHOLOGICAL INJURY OR ILLNESS.**

Under prior law, a cause of action for sexual abuse accrued and the statute of limitations began to run from the date of the wrongful act. But section 340.1 and its amendments changed that rule, declaring a separate and distinct date for the beginning of a different limitations period, i.e., the

date a plaintiff reasonably should have discovered that the cause of her psychological injuries was the childhood abuse. *Code of Civil Procedure* §340.1(a), *See Quarry* at 1591. The delayed discovery statute provides for a new limitations period to begin when the cause of any adult-onset injuries was or should have been discovered. *Quarry, supra*, at 1591. Therefore, since Plaintiff did not discover that she had a cause of action until December 20, 2004, under section 340.1(a), the statute of limitations did not expire until December 20, 2007. Since the complaint was filed on December 6, 2006, it was timely filed. Plaintiff did not have a claim prior to December 20, 2004, and therefore, it would be an injustice to take away a claim that had not yet accrued. *Quarry*, at 1586-1587.

Lent v. Doe (“*Lent*”), 40 Cal. App. 4th 1177 (1995), provides a similar analysis under an earlier version of section 340.1. In *Lent*, the plaintiff expressly alleged he had suffered “actual and appreciable injury” when he was abused as a child, and admitted he had not suppressed his memory of the abuse. *Lent, supra*, 40 Cal.App.4th at 1185. The defendant argued that these facts precluded the plaintiff from taking advantage of the delayed accrual provisions of section 340.1, subdivision (a). The *Lent* court found “[T]o satisfy delayed discovery plaintiff need only allege the onset of psychological injury or illness after the age of majority and that he commenced his action within three years of the time he discovered or

reasonably should have discovered such psychological injury or illness was caused by the childhood sexual abuse. (§ 340.1, subd. (a).)” *Id.* at 1186.

In *Quarry*, the court reached a similar conclusion, stating “the legal presumption that actionable injury occurs at the time of the molestation is not relevant. The current version of the statute expressly provides that the limitations period for adulthood psychological injuries begins when the cause of those injuries is or should have been discovered.... a legislative policy decision to allow victims to sue on injuries that are not reasonably discoverable until much later in life.” (Internal citations omitted) *Quarry* at 1592.

In complete contradiction to *Quarry*, the Court of Appeal erroneously disregarded Plaintiff’s “repressed memory” allegations in her Complaint, failing to properly apply the delayed discovery doctrine elucidated in *Evans v. Eckelman* (“*Evans*”), 216 Cal.App.3d 1609 (1990), and upheld by *Quarry* to be applicable to the current version of section 340.1(a). The Court of Appeals made an incorrect determination of the date of accrual of Plaintiff’s causes of action for sexual abuse, determining that the accrual was when the molestation occurred. Opinion at page 4-5. The incorrect determination of Appellant’s accrual date resulted in a flawed statute of limitations analysis by the Court of Appeal.

The decision by the Court of Appeal creates a conflict with *Quarry*

which determined that the delayed accrual provision of *California Code of Civil Procedure* § 340.1, subdivisions (a) and (b)(2), applied to the plaintiffs' claims resulting from childhood sexual abuse, and rendered those claims timely against the non-perpetrator defendant. The *Quarry* court applied well-settled rules of construction when it determined that the most recent amendments to section 340.1 applied prospectively to any claim that had not accrued prior to the amendments' effective date. The *Quarry* court determined that the delayed accrual rule applied since the plaintiffs, who were abused in the early 1970s, were unable to commence their actions until 2007, when they discovered that the abuse had resulted in adult-onset injuries. *Quarry*, at 1578-1579.

The *LA* court was aware of the *Quarry* decision. Nonetheless, even though the result in *LA* is in direct conflict with the result in *Quarry*, the written *LA* decision did not choose to follow its guidance.

1. The *LA* Opinion is Contrary to the Legislative Intent Underlying the Enactment of SB1779.

The *LA* Opinion does not effectuate the Legislature's intent in enacting SB1779. The Legislature noted that "[P]eople who discover their adulthood trauma from the molestation after the effective date of this 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. The three - year statute is the same for actions against the perpetrator.” *Assembly Committee on Judiciary Background Information Worksheet for SB 1779*. The Legislature clearly envisioned that any victim of childhood sexual abuse making a causal connection after age 26 would be permitted three years from making that connection to file an action. For any person who would be barred under that standard, §340.1(c) permitted a one year revival.

The *Quarry* case provides a simple explanation and supports a liberal reading of §340.1, stating, “[w]e have conclude that plaintiffs of all ages who discover the cause of their childhood injuries after 2003 can sue those defendants described in section 340.1, subdivision (b)(2).” *Quarry*, at 1589. *Quarry* went on to explain that the revivor provision of § 340.1, subdivision (c) provided a one year window for those victims who prior to 2003, discovered their psychological injury was caused by the childhood abuse but could not file suit because their discovery occurred after they reached the age of 26. *Quarry*, at 1590.

The legislative history also supports this simple explanation “this bill would provide those victims who *discovered their adulthood trauma after age 26, whose action has been barred by the current statute of limitations*, a one-year window to bring a case against a third party that otherwise would be time-barred.”*Id*, citing (*Assem.Com.on Judiciary, Analysis of Sen. Bill*

No. 1779 (2001–2002 Reg. Sess.) as amended June 6, 2002, p. 7, [italics added]; Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1779 (2001–2002 Reg. Sess.) as amended May 2, 2002, p. 6, [italics added]).

Pursuant to *Quarry*, and consistent with the legislative intent, “to satisfy delayed discovery plaintiff need only allege the onset of psychological injury or illness after the age of majority and that he commenced his action within three years of the time he discovered or reasonably should have discovered such psychological injury or illness was caused by the childhood sexual abuse. *Quarry* at 1592, (citing *Lent v. Doe*, 40 Cal. App. 4th 1177 at 1185, 1186). Pursuant to this finding, the court in *Quarry* rejected the lower court’s findings and reversed the demurrer to plaintiff’s complaint concluding that plaintiffs’ claims were timely under §340.1, subd. (b)(2).

According to *Quarry*, the timeliness of the complaint is to be measured by the statute in effect at the time the complaint was filed. Where, Plaintiff had no claim to bring that were barred by the current statute of limitations because they did not discover the cause of their psychological injuries prior to 2003, the fact that prior limitations periods may have expired before §340.1, subd. (b)(2)’s more liberal discovery rule became effective and before any complaint was filed did not bar the action because discovery of the cause of plaintiffs’ psychological injuries had not

yet occurred. *See Quarry*, at 1590.

B. The Common Law Delayed Discovery Doctrine Applies to Repressed Memory cases and was not Abrogated by the Deletion of the Savings Clause in the 1994 Amendments to §340.1.

The Court of Appeal also made an improper determination that the common law delayed discovery doctrine elucidated in *Evans* and its progeny was abrogated by the 1994 changes to §340.1. This finding is again in direct conflict with *Quarry*.

Quarry specifically analyzed this argument, finding that common law delayed discovery³ was not abrogated by the 1994 amendments to 340.1. *Quarry* reasoned that “it should not ‘be presumed that the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.” *Quarry* at 1593 (citing, *Ruoff v. Harbor Creek Community Assn.* 10 Cal.App.4th 1624, 1630 (1992)). “[T]he removal of the savings clause in 1994 did not expressly abrogate the common law delayed discovery rule”, and such intention is not necessarily implied. *Quarry* at 1593.

According to *Quarry*, the common law delayed discovery rule

³

Also referred to herein as the “Delayed Accrual Doctrine” and/or “Delayed Accrual Rule.”

specifically comes into play in situations where the plaintiff repressed the memory of the abuse. *Id.*

Prior to *Quarry*, Courts have recently affirmed that common law delayed discovery may be applied to sexual molestation claims. *See Curtis T. v. County of Los Angeles* (“*Curtis T.*”), 123 Cal.App.4th 1405 at 1417 (2004). In *Curtis T.*, the Complaint alleged the minor Plaintiff was molested while in foster care several years earlier, and further established that the Plaintiff presented a claim to the County within six months of his mother's discovery of the abuse. *Id.* at 1409. Before addressing the applicability of the “Delayed Accrual Doctrine” to the Plaintiff's sexual molestation claims, the Court discussed the history of the “Delayed Accrual Rule.” Therein, the Court stated:

“The rule delaying accrual until the plaintiff has discovered or should have discovered the facts establishing the essential elements of his or her cause of action ... originated in cases of medical malpractice and progressive occupational illness cases, but California Courts have since recognized its application to other tort actions. These have included attorney malpractice (*Neel v. Magana, Onley, Levy, Cathcart & Gelfand*, (1971) 6 Cal.3d. 176), liability for defective drugs, (*Jolly v. Eli Lilly & Co.*, (1988) 44 Cal.3d. 1103), invasion of privacy (*Cain v. State Farm Mutual Auto Insurance Co.*, (1976) 62 Cal.App.3d. 310, 315), libel (*Manguso v. Oceanside Unified School District*, (1979) 88 Cal.App.3d. 725, 731), and underground trespass (*Oakes v. McCarthy Co.* (1968) 267 Cal. App. 2d 231).” (*Id.* at 1416-1417.)

The *Curtis T.* Court noted that, “while there is no blanket rule for

always or never applying the [Delayed Accrual Rule] to minor's molestation cases, we believe the courts may equitably apply the [Delayed Accrual Rule] in appropriate child molestation cases." *Id.* In reversing a Demurrer sustained without leave to amend, the Court held that the

"Plaintiff must be given leave to amend to allege, if he is able to do so truthfully—given his youth, ignorance and inexperience, as well as his foster parents' alleged complicity in the abuse—that he lacked a real awareness, until his mother's discovery of the alleged molestation, that what happened to him between the ages of 5 and 8 was wrong. Such truthful allegations would be sufficient, in our view, to invoke the equitable delayed discovery rule of accrual, under which the plaintiff's claim would be deemed timely for pleading purposes...given there is a reasonable possibility the Complaint can be amended to allege facts sufficient to invoke the delayed discovery rule of accrual, we conclude the trial court abused its discretion in sustaining the demurrer without leave to amend." (*Id.* at 1422-1423.)

The effect of the "Delayed Accrual Doctrine" is to delay accrual of the cause of action. *Id.* at 1416.

Here, as in *Curtis T.*, the Plaintiff plead facts supporting the equitable application of the "Delayed Accrual Doctrine." In particular, Plaintiff alleged she "immediately repressed all memories" of the abuse and molestation, and" had no awareness" of them until December 20, 2004. Opinion at pages 2 and 3.

As such, Plaintiff adequately alleged that she was completely and blamelessly unaware of, and repressed all knowledge of, the sexual abuse

by DOE6 beginning from the date of the wrongful conduct until she first began having memories of the abuse well into her adulthood, on December 20, 2004. As a result of her complete and immediate repression of the acts of childhood sexual abuse by the perpetrator, Plaintiff was reasonably and blamelessly prevented from knowing, discovering, or becoming aware of the acts of sexual abuse by the perpetrator at an earlier time. Under these facts, and “given [Plaintiff’s] youth, ignorance, and inexperience at the time of the molestation,” it would have been impossible for Plaintiff to have reason to “suspect a type of wrongdoing had injured [him].” (*Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797 at 807 (2005).)

Plaintiff’s allegations plainly demonstrate that she immediately repressed any and all awareness of the childhood sexual abuse he suffered, and without such memories, could not have “suspected,” “discovered,” or otherwise been aware of the tortious conduct, or of the “wrongdoing” of DOE 6’s acts. As such, Plaintiff’s Complaint adequately pleads facts sufficient to invoke the “Delayed Accrual Doctrine,” under which her claim, *which accrued in December 20, 2004*, would be timely.

Pursuant to *Evans* and its progeny and the recent holding in *Quarry*, Plaintiff may rely on common law delayed discovery rendering her claim timely filed.

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C. IT IS IMPROPER FOR THE COURT OF APPEAL TO EFFECTIVELY SHORTEN PLAINTIFF'S STATUTE OF LIMITATIONS.

The *LA* decision is also in conflict with a line of cases interpreting statutory enactments shortening limitations periods. Dating back to this Court's decision in *Rosefield Packing Co. v. Superior Court* ("*Rosefield*") 4 Cal.2d 120 (1935), it has been settled that an amendment shortening a statutory limitations period cannot constitutionally be applied to immediately divest a plaintiff of an existing right of action. Under the Court of Appeal's analysis, the 1998 amendment to section 340.1 would have the effect of simultaneously applying an unstated abrogation of the equitable doctrine of delayed discovery to claims against non-perpetrator defendants, and creating a bar to claims by victims over the age of 26 on the effective date of the amendment. In doing so, the court of appeal interpreted section 340.1 to retroactively vitiate otherwise timely claims without allowing any reasonable time to pursue an action. This contravenes settled principles of Due Process. The *LA* ruling conflicts with *Rosefield* and numerous subsequent appellate decisions.

The interpretation of section 340.1 adopted by the Court of Appeal suffers from a well-settled constitutional infirmity: the 1998 amendment would have the effect of immediately cutting off all rights by victims of childhood sexual abuse over the age of twenty-six, even those claims that

were not previously barred. On December 31, 1998, nothing prohibited the courts from applying the equitable doctrine of delayed discovery to the plaintiff's action. *See Evans v. Eckelman* 216 Cal.App.4d 1609 (1990) (applying delayed discovery doctrine against non-perpetrator defendant "OCLO" corporation); *Mark K. v. Roman Catholic Archbishop of Los Angeles*, 67 Cal.App.4th 603, 612-13 (1998) (recognizing availability of common law doctrine to claim against institutional defendant, but finding requirements of *Evans* unsatisfied); *Assembly Concurrence in Senate Amendments to AB 1651* (1998), at 1-2 (recognizing law existing prior to 1998 amendment to section 340.1 permitted use of "exceptions" to the running of the statute of limitations.) This plaintiff could properly have commenced an action prior to the effective date of the 1998 amendment to section 340.1.

Under the Court of Appeal's analysis, when the 1998 amendments to section 340.1 became effective on January 1, 1999, the plaintiff was immediately divested of her rights by the cumulative effect of the purported abolition of the common law doctrine and the imposition of the age 26 limitation of §340.1(b). In so finding, the Court of Appeal injected constitutional issues into this action, but declined to address those concerns.

It is well accepted that the Legislature may shorten statutory limitations periods. *Rosefield*, 4 Cal.2d at 122. Amendments shortening

limitations periods are procedural and are normally applied retroactively and are applicable to pending actions. *Aronson v. Superior Court* 191 Cal.App.3d 294, 297 (1987). But, in any given case, the court must inquire whether retroactive application violates due process by, in effect, eliminating the plaintiff's right. *Id.* If the time left to file suit is reasonable, there is no constitutional impediment to the application of the new statute. *Id.* However, "if no time is left, or only an unreasonably short time remains, then the statute cannot be applied at all." *Id.*; *see also Rosefield*, 4 Cal.2d at 122-23.

Thus, "[w]hen necessary to provide a reasonable time to sue, a shortened limitations period may be applied prospectively so that it commences on the effective date of the statute, rather than on the date the cause of action accrued." *Coachella Valley Mosquito & Vector District v. California Public Employment Relations Board* (2005) 35 Cal.4th 1072, 1092; *see also Brown v. Bleiberg* 32 Cal.3d 426, 437 (1982).

The Court of Appeal never considered whether its analysis unconstitutionally deprived the plaintiff of her right to pursue an action. Instead, the Court of Appeal found that upon the effective date of the 1998 amendment, all claims by victims over the age of 26 were immediately

curtailed, even those that could have been timely filed 24 hours earlier.⁴

Such an interpretation necessarily raises due process concerns by immediately divesting victims with previously timely claims of any right to pursue an action.

The court of appeal adopted a construction of section 340.1 that renders portions of the statute inapplicable by virtue of constitutional concerns. The court neither addressed these constitutional issues, nor adopted a construction that could have avoided them. In so ruling, the court ignored well-settled authorities governing enactments shortening otherwise applicable statutes of limitations, and created conflict between itself and several decisions of this Court and the courts of appeal. The decision of the Court of Appeal conflicts with long-standing authority precluding legislative enactments from divesting plaintiffs of the ability to pursue a claim by retroactively applying shortened limitations periods.

This Court should grant review to alleviate the currently-existing conflicts.

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The Court of Appeal noted that “[i]n 1998, the Legislature amended section 340.1 to include, for the first time, claims alleging childhood sexual abuse against persons or entities other than the perpetrator.” Opinion at 17.

D. THE PRESENT PETITION MUST BE GRANTED ON THE SAME GROUNDS AS THE PETITION IN THE *KJ* CASE WAS GRANTED.

As stated herein-above, the Supreme Court granted review of the *K.J. v. Roman Catholic Bishop of Stockton*, (2009) 172 Cal. App. 4th 1388 (“*K.J.*”), case on June 24, 2009 [review granted, depublished by *K.J. v. The Roman Catholic Bishop of Stockton*, (Cal., June 24, 2009) 2009 Cal. LEXIS 5886, Stay granted by *K.J. v. Roman Catholic Bishop of Stockton*, (Cal., July 8, 2009) 2009 Cal. LEXIS 7257], and stayed the review pending the outcome of the Supreme Court’s decision in *Quarry v. Doe 1*, (2009) 170 Cal. App. 4th 1574 (“*Quarry*”) [Time for Granting or Denying Review Extended *Quarry v. Doe 1*, (Cal., May 6, 2009) 2009 Cal. LEXIS 4702; Review granted, Depublished by *Quarry v. Doe 1*, (Cal., June 10, 2009) 2009 Cal. LEXIS 6463; Later proceeding at *Quarry v. Doe 1*, (Cal., June 26, 2009) 2009 Cal. LEXIS 6766]. As the outcome of the *KJ* and *Quarry* cases directly bear upon the present Petition, the ruling by the Appellate Court herein, and the underlying action, and because this action is factually similar to the *KJ* case, in that it involves the very same statute of limitations issues with respect to a sexual abuse action, the present Petition must be granted by the Court.

///

V.

CONCLUSION

This Court should grant Plaintiff's Petition for Review in order to secure uniform development of the law and protect Plaintiff's Due Process rights. The *LA* Opinion conflicts with established authority interpreting the language of § 340.1(a) and common law discovery principles. Plaintiff respectfully requests that this Court should grant the Petition for Review of the Opinion rendered in *LA*.

Respectfully submitted,

Dated: September 17, 2009

MANLY & STEWART

By:

A handwritten signature in black ink, appearing to read "Vince Finaldi", written over a horizontal line.

JOHN C. MANLY, Esq.
VINCE WILLIAM FINALDI, Esq.
Attorneys for Appellant,
LA.

CERTIFICATE OF WORD COUNT

PURSUANT TO RULE 14(c)(1)

Pursuant to California Rule of Court 14(c)(1), counsel for Respondents hereby certifies that this brief was prepared in Times New Roman 13 font and the number of words contained in this Petition for Review, including footnotes but excluding the Table of Contents, Table of Authorities, and this Certificate, is 5347 words as calculated using the word count feature of the computer program used to prepare the brief.

Dated: September 17, 2009

MANLY & STEWART

By: 

JOHN C. MANLY, Esq.
VINCE WILLIAM FINALDI, Esq.
Attorneys for Appellant,
LA.

EXHIBIT "A"

FILED

AUG 12 2009

COURT OF APPEAL - THIRD DISTRICT
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

L.A.,

Plaintiff and Appellant,

v.

THE ROMAN CATHOLIC BISHOP OF
STOCKTON et al.,

Defendants and Respondents.

C057895

(Super. Ct., No. CV031343)

Plaintiff, who has been designated the fictitious name L.A., appeals from a judgment following the sustaining of a demurrer, without leave to amend, to her complaint for damages against defendants The Roman Catholic Bishop of Stockton, the Pastor of Presentation Church, and the Pastor of St. Anne Church (collectively, defendants). The allegations of the complaint are, in all material respects, identical to those of the plaintiff in a related case before us, *D.D. v. The Roman Catholic Bishop of Stockton*, C057260 (D.D.).

Our opinion in *D.D.*, which we are filing contemporaneously with this decision, governs the disposition of this appeal. We

shall therefore affirm the judgment for the reasons set forth in our lengthy discussion in that case.

FACTUAL BACKGROUND

Since this is an appeal following an order sustaining a demurrer, we summarize and accept as true all well-pleaded material allegations of the complaint. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8, fn. 3; *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7.) We exercise our independent judgment in reviewing a demurrer to determine whether the factual allegations of the complaint state a cause of action. (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.)

The complaint

Plaintiff alleges she was the victim of horrific and continuous acts of sexual abuse by Doe 6, a priest, teacher and agent of defendants. The abuse occurred between 1981 and 1984, when plaintiff was between the ages of seven and nine. Defendants and their employees knew of the abuse and concealed, condoned, and otherwise failed to protect plaintiff from Doe 6, despite actual or constructive notice that he had abused other minors and was a chronic child molester.

Plaintiff, now well into adulthood, "immediately repressed all memories of said harassment, abuse, and molestation as a direct result of the trauma inflicted by [Doe 6], and had no awareness of the actions, injury, or wrongfulness of such acts" at the time they occurred.

On December 20, 2004, plaintiff recovered her memory of the sexual abuse when, while riding in an elevator, she smelled a certain mixture of body odor and cologne, which triggered her childhood memories of being molested. During this elevator ride, plaintiff "discovered that her psychological injuries and/or illness, were actually caused by the childhood sexual harassment, molestation and abuse she suffered at the hands of DOE 6, while she was a minor parishioner and student."

Plaintiff seeks damages against defendants based on a number of legal theories, including negligent supervision, negligent hiring and retention, failure to warn, constructive fraud, sexual battery, assault, and sexual harassment.

Procedural history

Plaintiff filed her complaint on December 6, 2006. Defendants demurred, inter alia, on the ground that the complaint was time-barred. The trial court agreed with defendants and sustained the demurrer without leave to amend. The court's order states in pertinent part:

"IT IS ORDERED that the Demurrer be, and is hereby, sustained without leave to amend . . . on the ground that: [¶] 1) *Hightower v. Roman Catholic Bishop of Sacramento* (2006) 142 Cal.App.4th [759] is applicable. Plaintiff's claim lapsed prior to January 1, 2003. Plaintiff enjoyed a one-year revival window, and she did miss it. Further, her claims against non-direct perpetrators are barred by the statute of limitations[, section] 340.1[, subdivision] (c). [¶] 2) Assuming a tolling

of the statute of limitations based on repressed memory, plaintiff is barred by the one-year statute for personal injury claims that existed at the time her cause of action accrued-- December 20, 2004--old C[ode of] C[ivil] P[rocedure] section 340."

DISCUSSION

I. Plaintiff's Arguments for Reversal Are Without Merit

Plaintiff's arguments are indistinguishable from those raised by the plaintiff in *D.D.* We reject each of them for the reasons we have fully explained in our opinion in that case.

II. *Hightower Controls*

Plaintiff also asserts that the trial court incorrectly relied on *Hightower v. Roman Catholic Bishop of Sacramento* (2006) 142 Cal.App.4th 759 (*Hightower*) in ruling that her claim was time-barred because she did not avail herself of the revival window that opened in 2003 under section 340.1, subdivision (c). She points out that, unlike *Hightower*, who was aware of the sexual abuse at the time it was perpetrated, she pleaded that she had no awareness of the sexual abuse until she recovered her repressed memory in late 2004.

However, as we point out in *D.D.*, the part of the *Hightower* opinion upon which plaintiff relies was *dictum*. The essence of *Hightower's* holding was that in creating the one-year revival window, "[t]he Legislature . . . drew a clear distinction between claims that were time-barred and those that were not," and that permitting application of the delayed discovery

provision of section 340.1, subdivision (a) to Hightower's case "would obliterate that distinction." (*Hightower, supra*, 142 Cal.App.4th at pp. 767-768.) That holding remains equally applicable to plaintiff's claim here.

DISPOSITION

The judgment is affirmed. Defendants shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

SCOTLAND, P. J.

BLEASE, J.

PROOF OF SERVICE

Re: L.A. v. The Roman Catholic Bishop of Stockton, et al

App Case No: C057895 - San Joaquin Superior Court Case No. CV031343

STATE OF CALIFORNIA,
COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 4220 Von Karman Avenue, Suite 200, Newport Beach, California 92660.

On September 18, 2009 I served the foregoing document described as: **PETITION FOR REVIEW** on the interested parties in this action

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Executed on September 18, 2009 at Newport Beach, California.



Kathy Frederiksen

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