

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse

Hearing re: Motion to Strike Complaint on 1st Amended Complaint for Other Personal Injury/Property  
Damage/Wrongful Death Tort (Over \$25,000) of J. R 1.

02/01/2024  
8:30 AM  
Department PS1

**CVPS2205005**  
**R 1. vs DOE 1**

Honorable Kira L. Klatchko, Judge  
D. Elless, Courtroom Assistant  
Court Reporter Pro Tem Darci Mullarky, Court Reporter

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## APPEARANCES:

MUSICK, PEELER & GARRETT LLP is present Telephonically, by counsel, Beth Kahn, representing  
DOE 2

POOLE SHAFFERY is present Via Video, by counsel, Brian Walters, representing DOE 1

SLATER SLATER SCHULMAN LLP is present Telephonically, by counsel, Michael Amaro,  
representing J. R 1.

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This matter is being live streamed for public access.

At 08:42 AM, the following proceedings were held:

Motion by DOE 1 regarding Motion to Strike 1st Amended Complaint is called for hearing.

Argument presented by Brian Walters.

Argument presented by Michael Amaro.

Court makes the following order(s):

Tentative ruling shall become the ruling of the court.

Motion to Strike 1st Amended Complaint denied.

Plaintiff's action alleges childhood sexual abuse. Plaintiff is over 40 and has brought this action under Code of Civil Procedure section 340.1, which extends the statute of limitations. Doe 1 (Watchtower), who is not alleged to be the perpetrator but to have employed the perpetrator, Doe 3, moves to strike from the First Amended Complaint allegations of conduct that occurred after the alleged abuse that it contends cannot be the "legal cause" of harm under Code of Civil Procedure section 340.1. It also seeks to strike allegations relating to "reporting" requirements that it contends were not mandatory at that time of the alleged abuse, allegations that pertain to conduct that is within the clergy privilege of non-disclosure, and allegations referring to lay clergy as employees. The motion is denied as these allegations are not "irrelevant, false, or improper." (Code Civ. Proc., § 436(a).)

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“[A] motion to strike is generally used to reach defects in a pleading which are not subject to demurrer.” (Pierson v. Sharp Memorial Hospital, Inc. (1989) 216 Cal.App.3d 340, 342.) A motion to strike may be brought to strike the portion of a pleading on the grounds that that pleading contains irrelevant, false, or improper matter. (Code Civ. Proc., §436(a).) The grounds for a motion to strike must appear on the face of the challenged pleading or from matter which is judicially noticeable. (Code Civ. Proc., §437(a).) In ruling on a motion to strike, “judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth.” (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.) An “immaterial allegation” as defined by section 431.10 shares the same meaning as “irrelevant matter” in Code of Civil Procedure section 436. Section 431.10 defines “immaterial allegation” as one of the following: (1) “An allegation that is not essential to the statement of a claim or defense”; (2) “An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense”; or (3) “A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.” (Code Civ. Proc., §431.10 (b)(1),(b)(2), (b)(3), (c).)

Although the motion identifies four categories of allegations that should be stricken, Doe 1 does not explain how each of the 26 items at issue fall into these categories and does not explain why striking these allegations is appropriate. First, no part of the First Amended Complaint, as referenced in the motion, contains allegations of conduct that occurred after Plaintiff was allegedly abused. For instance, paragraphs 39, 40, 41(c), 42(c), and 43-45 do not allege conduct that occurred after the alleged abuse. Doe 1 seeks to strike the word “employee(s)”, but Doe 1 has not pointed to any allegations in the First Amended Complaint that are improper, false, irrelevant, or not drawn in conformity with law. Doe 1 also requests that any reference to “lay clergy” as employees be stricken. To the extent Doe 1 relies on its request for judicial notice to support the request, the Court denies the request. Doe 1’s request for judicial notice asks the Court to take judicial notice of the proposition that its Elders and Ministerial Servants are unpaid volunteers and not employees. This proposition is not properly noticeable as notice is not mandatory nor is this a matter that is “capable of immediate and accurate determination by resort to resources of reasonably indisputable accuracy.” (Evid. Code, § 452(h).) The truth of the statement at issue is very much in dispute.

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Doe 1 also provides no legal authority supporting its contention that it did not have a duty to report childhood sexual abuse. It has not demonstrated that allegations about its obligation to report abuse are irrelevant, false, or improper as a matter of law. Doe 1 also fails to show that any parts of the First Amended Complaint at issue in the motion contain allegations protected by the clergy-penitent privilege. The privilege applies “penitential communications” between clergy and penitent which are not subject to disclosure. (Evid. Code, § 1034 [“a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege”]; Doe 2 v. Superior Court (2005) 132 Cal.App.4th 1504, 1517.) No part of the First Amended Complaint refers to a “penitential communication” made in confidence, to a clergy member. (Evid. Code, § 1032.) Furthermore, under the Evidence Code, a “clergy member” means “a priest, minister, religious practitioner or similar functionary of a church or of a religious denomination or religious organization.” (Evid. Code, § 1030.) Although the FAC refers to certain employees or agents of Doe 1 as “Elders and Ministerial Servant” (See FAC, ¶¶ 14, 8), the motion does not identify any allegations using the term “clergy member,” or any synonymous terms defined in the Evidence Code.

The OSC re failure to meet and confer set for hearing on February 1, 2024 is vacated.  
Oral motion by Brian Walters re: Set Aside Sanctions is called for hearing.  
Oral Motion to Set Aside Sanctions is denied.  
Notice waived.