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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA BARBARA, ANACAPA DIVISION

14 ERNESTO C., an individual,
15 Plaintiffs,

16 vs.

17 FRANCISCAN FRIARS OF CALIFORNIA,
18 INC.; OLD MISSION SANTA BARBARA;
19 AND DOES 3 THROUGH 100, Inclusive,
20 Defendants.

) Case No. 1337577

) **REPLY IN SUPPORT OF MOTION TO**
) **STRIKE PORTIONS OF FIRST AMENDED**
) **COMPLAINT**

) Hearing Date: March 16, 2010
) Time: 9:30 a.m.
) Department: 3

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I. LEGAL DISCUSSION

A. Defendants Are Not Moving To Strike A Cause Of Action.

Plaintiffs' accusation that Defendants are attempting to "strike an entire cause of action" is meritless. Defendants are only moving to strike the allegations involving *other* victims and *other* perpetrators. In actuality, abuse allegations involving other priests and other victims 1) mostly appear in the preamble to the causes of action (not within the public nuisance cause of action itself), 2) the allegations will remain part of the First Amended Complaint even if Defendants' demurrer to the public nuisance cause of action is granted, and 3) Plaintiffs have not cited to any authority holding that a defendant cannot move to strike immaterial factual surplusage while also demurring to a cause of action.

B. Defendants Are Moving To Strike Irrelevant Surplusage.

Plaintiffs quote *Quiroz v. Seventh Ave. Ctr.* (2006) 140 Cal.App.4th 1256, 1281, for the general proposition that facts which are *material* to a cause of action should not be struck. Defendants can hardly dispute this very general statement of law. Rather, this is precisely why Defendants are *not* moving to strike allegations relating to *Plaintiffs' own* alleged sexual abuse or the allegations involving *their* alleged perpetrators. Instead, Defendants have moved to strike the voluminous recitation of allegations involving *other* victims and *other* perpetrators which are *not* relevant to *Plaintiffs'* claims, and thus, should be appropriately struck by this Court.

Plaintiffs suggest that allegations of other victims and other perpetrators are relevant to causes of action other than public nuisance. Plaintiffs offer no authority for this contention. In fact, this assertion is directly contrary to the law.

Only "prior notice" of alleged sexual abuse by Plaintiffs' alleged perpetrators will serve to "revive" their decades-old abuse claims under the applicable statute of limitations, CCP §340.1. Prior notice of abuse by any other alleged perpetrator is completely irrelevant. In *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 532, the California Supreme Court unanimously held that to "revive" a decades-old sexual abuse claim, the plaintiff must establish that the entity defendant had notice that the *particular* perpetrator "employee" had committed "...past unlawful conduct with a minor..." The plaintiffs sued for decades-old childhood sexual abuse by a police officer at a time when plaintiffs had been participants in an explorer scout program. *Id.* at 536. The plaintiffs alleged that the Boy Scouts had

1 *actual* knowledge of a staggering amount of *prior* incidents of childhood sexual abuse by *other*
2 employees and volunteers. *Id.* at 551-552. Specifically, plaintiffs alleged the Boy Scouts knew that 1)
3 pedophiles were active in its organization, 2) the organization maintained “confidential files” on scout
4 leaders suspected of child molestation, 3) that “numerous” scout leaders had previously been arrested
5 and tried for childhood sexual abuse, and 4) that the abuse frequency was “more than one incident of
6 sexual abuse per week for the past two decades involving scouts and scout leaders, that is, more than
7 1000 reported incidents since 1980’s (and) that (the Scouts) knew or had reason to know of comparable
8 numbers of sexual abuse occurring before 1980.” *Id.* at 540. The Court rejected plaintiffs’ argument
9 that sexual misconduct by any *other* employee of defendant satisfied the prior notice requirement,
10 holding that only knowledge of prior sexual misconduct by the *accused perpetrator* constitutes notice.
11 *Id.* at 572.

12 II. CONCLUSION

13 Because all of Plaintiffs’ allegations concerning alleged abuse by other priests and other victims
14 are irrelevant to any valid claim in these actions, they should be struck by this Court.

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16 DATED: March 9, 2010

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By: 

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