

1 Mark Charles Bowman, SBN 143948
Kevin Julius Berreth, SBN 236759
2 BOWMAN & BERRETH
1820 West Kettleman Lane, Suite F
3 Lodi California 95242
Telephone: 209/ 369-1767
4 Facsimile: 209/ 334-6045
5 mark@bowmanberreth.com

6 Attorneys for Defendants
CALVARY OPEN BIBLE CHURCH,
7 MARK WOOD AND ANTHONY LEE

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 AMBER DUTRO, GLENDA STRIPES,
13 SARAH DUTRO, MARTHA McKNELLY,
14 FRANCES SMITH, and CHRISTINA
MOORE,

15 Plaintiffs,

16 vs.

17 COUNTY OF CONTRA COSTA,
18 CALVARY OPEN BIBLE CHURCH, CITY
OF ANTIOCH, ART ACOSTA, DEMETREE
19 BARAKOS, WILLIAM DEE, JACK
ROGERS, TOM POTTS, MARK WOOD,
20 ANTHONY LEE, and ROES 11 TO 100,

21 Defendants.

CASE NO. CV-12-2972

**DEFENDANT MARK WOOD'S NOTICE OF
AND MOTION TO STRIKE THE FIRST
AMENDED COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES**

F.R.C.P. 12(f)(2)

DATE: August 1, 2012
TIME: 9:00 a.m.
CTRM.: A
JUDGE: Magistrate Judge Nathanael Cousins

22 //
23 //
24 //
25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 1, 2012, at 9:00 a.m., or as soon thereafter as the matter may be heard in Courtroom A of the above-entitled Court located at 450 Golden Gate Avenue, San Francisco, CA 94102, defendant Mark Wood will, and hereby does, move the Court to strike the First Amended Complaint filed by plaintiffs Amber Dutro, Glenda Stripes, Sarah Dutro, Martha McKnelly, Frances Smith and Christina Moore as follows:

<u>Page(s)</u>	<u>Text To Be Stricken</u>
1-22	Entire Complaint
21	Line 27

Mark Wood moves to strike the First Amended Complaint on the grounds that:

1. The complaint is not timely filed.
2. The complaint alleges punitive damages when punitive damages are not available as matter of law.

This motion is based on this Notice of and Motion, these Memorandum of Points and Authorities and all other evidence as the Court may receive at the hearing of this motion.

BOWMAN & BERRETH

/S/

DATED: June 15, 2012

By: _____
Mark Charles Bowman, Attorney for
Defendant Mark Wood

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs have prayed for punitive damages when the claims they presented do not permit an award of punitive damages as a matter of law. Additionally, the Complaint was not timely filed. Consequently, the entire action should be stricken.

II. STANDARD FOR MOTION TO STRIKE.

Rule 12(f) permits a court to strike from a pleading “any redundant, immaterial, impertinent, or scandalous matter” either on its own or upon a party’s motion. Fed. R. Civ. P. 12(f). “[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial” *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir.1983). Immaterial matter is that which has no important relationship to the claim, and impertinent matter that which does not pertain and is unnecessary to the issues in question. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1994) (quoting 5 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1382, at 706-07 (1990)), rev’d on other grounds, 510 U.S. 517, 534-35 (1994). Specifically, a motion to strike is appropriate to address requested relief, such as punitive damages, which is not recoverable as a matter of law. *Wilkerson v. Butler*, 229 F.R.D. 166, 172 (E.D. Cal. 2005).

III. STATEMENT OF FACTS.

A. Facts Pertaining to Plaintiff’s Failure to Timely File.

The First Amended Complaint (“Complaint”) states that plaintiffs were all adults at the time their lawsuit was filed on December 7, 2011, and that their abuse started in 1982. Complaint ¶¶ 1 and 14. Plaintiffs were, therefore, all at least 29 years old when they filed this action.

B. Facts Pertaining to Prayer for Punitive Damages.

The Complaint states only two facts pertaining to the conduct of Mark Wood:

- 1 1. Wood confronted the Dutros about Zion Dutro’s abuse of his daughter before he
- 2 reported the abuse to the police. Complaint ¶ 22; and
- 3 2. Wood accompanied the Dutros to the Antioch police station for an interview six days
- 4 after the abuse was reported. Complaint ¶ 22.

4 **IV. ISSUES TO BE DECIDED.**

- 5 A. Whether the claim that defendant Wood’s confronting a child abuser before reporting to
- 6 the police warrants an award of punitive damages.
- 7 B. Whether a complaint that is not timely filed may be stricken.

8 **V. ARGUMENT.**

9 **A. The Complaint Alleges Punitive Damages When Punitive Damages Are Unavailable**
10 **As A Matter of Law.**

11 The Complaint describes no oppression, fraud or malice on the part of Mark Wood. Such
 12 allegations are required to impose punitive damages. Civ. Code § 3294. A breach of duty alone —
 13 without malice, fraud or oppression— does not permit an award of punitive damages. *Flyers Body*
 14 *Shop Profit Sharing Plan v. Ticor Title Ins. Co.* (1986) 185 Cal. App. 3d 1149, 1154.

15 **B. The Complaint is Not Timely Filed.**

16 Courts have authority to strike pleadings that are filed late. *Buck v. Morrossis* (1952) 114
 17 Cal. App. 2d 461, 464, 465. Here, the pleadings disclose on their face that the applicable statute of
 18 limitations on plaintiffs’ action ran well before the filing of the Complaint. The Complaint is
 19 therefore subject to being stricken as untimely.

20 **VI. CONCLUSION.**

21 Because the Complaint seeks damages that are unavailable as a matter of law, and it was not
 22 timely filed, it should be stricken in its entirety.

23 //
 24 //
 25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Respectfully submitted,

BOWMAN & BERRETH

/S/

DATED: June 15, 2012

By: _____
Mark Charles Bowman, Attorney for
Defendant Mark Wood