No. _____
(Court of Appeal No. H038934)
(Santa Clara County Superior Court No. 110CV185748)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HANH NGUYEN, by and through her guardian ad litem, KIM NGUYEN,

Plaintiff and Respondent,

v.

WESTERN DIGITAL CORPORATION,

Defendant and Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

Whether an untold number of lawsuits for prenatal or birth injuries allegedly caused by exposure to a hazardous material or toxic substance are subject to the statute of limitations that governs "[a]n action" for prenatal or birth injuries (Section 340.4 of the Code of Civil Procedure, which *is not* subject to minority tolling), or instead to the statute of limitations that governs "any civil action" based on exposure to a hazardous material or toxic substance (Section 340.8, which *is* subject to minority tolling).

INTRODUCTION

This case presents the critically important question of whether lawsuits for prenatal or birth injuries allegedly caused by exposure to a hazardous material or toxic substance must be brought within six years after the plaintiff's birth (as Western Digital contends), or instead may be brought up to *two decades* later (as the Court of Appeal held). The Court of Appeal ruling upends decades of settled California law by more than *tripling* the statute of limitations for such actions—from 6 years to up to 20 years—thereby upsetting the settled expectations of countless California businesses and other potential defendants. These businesses and other defendants will now be faced with lawsuits they are essentially unable to defend because, with the passage of so much time, records will have been lost, memories will have faded, and witnesses will have disappeared.

For more than seventy years, tort claims for prenatal or birth injuries have been subject to a six-year statute of limitations, and—most significantly here—that limitations period is *not* tolled until the plaintiff reaches the age of majority. Indeed, the Legislature in 1941 enacted the predecessor to Section 340.4 (the "Prenatal Statute") for the specific purpose of vitiating a prior court decision that suggested minority tolling might apply. It thus has been settled for generations that the limitations

period for tort claims based on prenatal or birth injuries is six years and begins to run at birth (or, if later, upon discovery of the claim).

The Court of Appeal's decision changes all of that, dramatically altering the legal landscape in California. It holds that the two-year limitations period contained in Section 340.8 (the "Hazardous Materials Statute") supersedes the limitations period contained in the earlier-enacted Prenatal Statute, even though the Hazardous Materials Statute makes no reference to the Prenatal Statute. Because the Hazardous Materials Statute permits tolling until the age of majority—while the Prenatal Statute expressly bars it—the Court of Appeal effectively extended the limitations period governing the Plaintiff's claims from 6 years to up to 20 years.

The Court of Appeal erred. This Court does "not presume that the Legislature intends, when it enacts a new statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied" in the newly-enacted statute. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199 (hereafter, "*Zamudio*").) Nothing indicates that the Legislature intended for the Hazardous Materials Statute to alter settled law with respect to lawsuits for prenatal or birth injuries by superseding the Prenatal Statute. Nor does the Legislature's silence on the issue provide a basis to supersede the Prenatal Statute. (*Anson v. Cnty. of Merced* (1988) 202 Cal.App.3d 1195, 1202.) And the decision below directly contravenes the specific purpose of the Prenatal Statute: that claims for injuries sustained before or during a plaintiff's birth should not be subject to tolling based on the plaintiff's status as a minor.

If permitted to stand, the Court of Appeal's decision will invite plaintiffs to bring stale claims that otherwise have long been time-barred under the Prenatal Statute. And going forward, new plaintiffs will have 20 years to file lawsuits based on prenatal or birth injuries allegedly caused by a hazardous material or toxic substance; and California businesses and

other potential defendants will need to keep these potential liabilities on their books—and preserve records or other possible evidence—for two decades. The decision further injects confusion and inconsistency regarding the limitations period for claims based on prenatal or birth injuries. Those involving a hazardous material or toxic substance will be tolled until the age of majority, while all others—*e.g.*, those resulting from medical devices or other causes—will not be. As a result, plaintiffs will have up to *20 years* after birth (the two-year limitations period being tolled until the plaintiff reaches age 18) to file claims for prenatal or birth injuries based on exposure to a hazardous material or toxic substance, while for other claims plaintiffs must sue within the Prenatal Statute's six-year limitations period. Nothing in the text or history of the Hazardous Materials Statute indicates an intent to create such an anomalous result.

This Court should grant review to decide a legal issue that will be case-dispositive of numerous personal-injury lawsuits brought each year in California state and federal courts. And the Court should hold that claims for prenatal or birth injuries—regardless of whether those injuries resulted from a hazardous material or toxic substance, or some other cause—are governed by the Prenatal Statute. Doing so is crucial to restoring the consistency and clarity that prevailed in California for more than seven decades prior to the Court of Appeal's ruling in this case, and to preventing severe prejudice to the many potential defendants impacted by this ruling.

STATEMENT OF FACTS

Plaintiff-Respondent Hanh Nguyen was born on August 11, 1994 with agenesis of the corpus callosum, a birth defect affecting brain structure. (2 AA at 501, ¶ 1; 505, ¶ 22.)[1] She filed this lawsuit more than 15 years later, on December 31, 2009, alleging that her injuries resulted

[1] Record citations are to Appellant's Appendix ("AA") filed in the Court of Appeal.

from prenatal exposure to toxic chemicals at a Western Digital manufacturing facility where her mother, Lan Tran, worked. (1 AA at 194-211.) Lan sued on Hahn's behalf after Lan and Hanh's father responded to an advertisement from a law firm seeking clients for toxic exposure lawsuits.[2] (2 AA at 520-21, ¶¶ 96-98.)

The trial court sustained Western Digital's demurrer to the Third Amended Complaint without leave to amend. The court held that Hanh's cause of action accrued at the latest in 1998 when Lan spoke with a Western Digital health care provider about whether Hanh's injuries had been caused by prenatal exposure to chemicals at Western Digital. (*Id*. at 568-70.) Consequently, the Prenatal Statute's six-year statute of limitations expired no later than 2004, long before this action was filed in 2009. (*Id*.)

The Court of Appeal reversed. It held that the Hazardous Material Statute (Section 340.8) superseded the Prenatal Statute (Section 340.4). (Opinion ("Op.") at 33.) The court reasoned that because Hanh's cause of action was not barred under Section 340.4 on Section 340.8's effective date—January 1, 2004—Hanh could invoke Section 340.8, which, unlike Section 340.4, permits tolling of the limitations period until the plaintiff reaches the age of majority under Section 352. (*Id*.)

REASONS FOR GRANTING REVIEW

I. The Decision Below Upends Seventy Years Of Settled Law By Extending The Limitations Period For Certain Prenatal Or Birth Injury Claims From Six Years To Two Decades

A. The Limitations Period For Claims Based on Prenatal or Birth Injuries Is Well Settled And Was Not Altered By The Enactment Of The Hazardous Materials Statute

Since 1872, California has recognized a child's statutory right to recover for prenatal and birth injuries. (*Young v. Haines* (1986) 41 Cal.3d

[2] The Third Amended Complaint substituted plaintiff's sister, Kim Nguyen, as Hanh's *guardian ad litem.*

883, 892.) In 1939, the Court of Appeal in *Scott v. McPheeters* (1939) 33 Cal.App.2d 629, 631, suggested that the limitations period for an action based on prenatal injuries would be tolled during the child's minority. (*Olivas v. Weiner* (1954) 127 Cal.App.2d 597, 599.) The Legislature, acting "at the next regular session" (*id.*), amended Civil Code Section 29 to impose a six-year statute of limitations for prenatal or birth injury claims, stating expressly that minority tolling under Section 352 does not apply to such claims. (*Young v. Haines*, *supra*, at p. 892; Stats. 1941, ch. 337, p. 1579, § 1.) As *Olivas* explained, "[t]he Legislature immediately recognized the seriousness of the problem following the *Scott v. McPheeters* decision and proceeded to correct the situation." (*Olivas v. Weiner*, *supra*, at p. 600.) The *Olivas* court further explained the important policy reason underlying the absence of tolling for prenatal or birth injuries:

> The Legislature undoubtedly concluded that to permit such an action to be brought up to 22 years[3] after the child's birth, i.e., within one year after it reached majority, placed an unreasonable burden upon the defendant to locate witnesses and to produce evidence in defense of the charges after the lapse of such a long period. The Legislature decided that six years was a reasonable time within which to bring such an action.

(*Id.* at p. 599.) In the more than seventy years that followed, the Legislature has preserved the statutory mandate (originally in Civil Code Section 29 and now in the Prenatal Statute) that such claims are not subject to minority tolling. The Prenatal Statute provides in full: "An action by or on behalf of a minor for personal injuries sustained before or in the course of his or her birth must be commenced within six years after the date of birth, and the time the minor is under any disability mentioned in Section

[3] At the time *Olivas* was decided, the age of majority was 21 years.

352 shall not be excluded in computing the time limited for the commencement of the action." (Code Civ. Proc., § 340.4.)

The Hazardous Materials Statute, enacted in 2003, establishes a two-year statute of limitations for "any civil action for injury or illness based upon exposure to a hazardous material or toxic substance . . . ." (*Id*., § 340.8, subd. (a).) Of central importance here, this two-year limitations period is subject to minority tolling under Section 352, subdivision (a), which provides that if the plaintiff "is, at the time the cause of action accrued either under the age of majority or insane, the time of the disability is not part of the time limited for the commencement of the action."

The Legislature's enactment of the Hazardous Materials Statute had nothing whatsoever to do with the Prenatal Statute or the issue of minority tolling. Rather, it stemmed from an entirely different concern—the need to "incorporate recent court decisions into a three-part test to use in applying the 'delayed discovery' doctrine to cases . . . resulting from exposure to hazardous waste . . . ." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 331 (2003-2004 Reg. Sess.) as amended Apr. 29, 2003, p. 1 (hereafter, "Sen. Com. Analysis"); *see also Unruh-Haxton v. Regents of the University of California* (2008) 162 Cal.App.4th 343, 363 [the Hazardous Materials Statute's "historical notes" demonstrate the Legislature's intent to codify the delayed-discovery rule].) According to the Senate Judiciary Committee Report, the delayed-discovery rule is "particularly important" in toxic-exposure cases, because "illnesses and injuries from exposure to toxic substances can take years to discover and to trace to a negligent act." (Sen. Com. Analysis at p. 3.) Enactment of the Hazardous Materials Statute also was meant to disapprove of the decision in *McKelvey v. Boeing* (1999) 74 Cal.App.4th 151, insofar as that case imputed knowledge to plaintiffs in toxic-exposure cases as the result of publicized accounts of pollution and contamination. (Sen. Com. Analysis at p. 4; Code Civ. Proc., § 340.8,

subd. (c)(2) ["[m]edia reports regarding the hazardous material or toxic substance contamination do not, in and of themselves, constitute sufficient facts to put a reasonable person on inquiry notice that the injury or death was caused or contributed to by the wrongful act of another"].)

Indeed, commentators analyzed the Hazardous Materials Statute as affecting the discovery rule, not minority tolling. (*See*, *e.g.*, 25 No. 1 Cal. Tort Rep. 40 (2004) [Section 340.8 "codifies the rulings in [*Jolly, Norgart* and *Clark*] and disapproves . . . *McKelvey*"]; 17 No. 4 Cal. Envtl. Insider 9 (July 31, 2003) [Section 340.8 "seeks to reverse or limit the impact of a recent decision holding that plaintiffs in a toxic tort case should have been aware of the possibility their injuries were caused by exposure to toxic chemicals due to extensive publicity in the case, and that this 'constructive knowledge' can be imputed to the plaintiffs for purposes of the running of the statute of limitations"].) Aside from the Court of Appeal's decision in this case, Western Digital is aware of no commentary, treatise, or other secondary source interpreting the Hazardous Materials Statute to supersede the Prenatal Statute's prohibition of minority tolling for claims based on prenatal and birth injuries.

B. The Court Of Appeal's Decision Creates Inconsistency In California Law Regarding The Limitations Period For Claims Involving Prenatal or Birth Injuries

The Court of Appeal decision dramatically alters California law by extending the limitations period for an extremely common type of personal-injury lawsuit from 6 years to up to *20 years*. A large number of children are born in California each year with birth defects or other potential prenatal or birth injuries.[4] Numerous lawsuits are filed each year in

[4] Calif. Dep't of Public Health, Calif. Birth Defects Monitoring Program ("CBDMP"), *Overview*, <http://www.cdph.ca.gov/programs/CBDMP/Pages/BirthDefectInformationOverview.aspx> (as of Nov. 3, 2014); CBDPM, *Estimated Annual Birth Defects for California's 58 Counties*,

California state and federal courts alleging that plaintiffs' prenatal or birth injuries resulted from exposure to a hazardous material or toxic substance. Indeed, on the same day this case was decided, the Sixth District Court of Appeal decided two other such cases involving prenatal or birth injuries based on alleged toxic exposure at semiconductor manufacturing facilities. Those cases, like this one, also presented statute of limitations questions involving Section 340.8, Section 340.4, and Section 340.4's predecessor. (*Ovick v. National Semiconductor Corp.* (Sept. 25, 2014) 2014 WL 4783239; *Studendorff v. National Semiconductor Corp.* (Sept. 25, 2014) 2014 WL 4783253.) A fourth toxic-exposure prenatal or birth injury case remains pending on appeal before the Second District. (*Lopez v. Diagraph, Inc*., Court of Appeal Case No. B256792).

For generations, it was settled in California that lawsuits for prenatal or birth injuries are subject to the Prenatal Statute's six-year limitations period, which begins to run at birth (or, if later, discovery of the claim) and is not subject to minority tolling. Indeed, in this case and the other three cases discussed above, all three trial judges concluded that Section 340.4, and not Section 340.8, governed the plaintiffs' claims. (*Ovick v. National Semiconductor Corp.*, *supra*, 2014 WL 4783239, at *4; *Studendorff v. National Semiconductor Corp.*, *supra*, 2014 WL 4783253, at *4; *Lopez v. Diagraph, Inc.* (March 14, 2014) 2014 WL 1321045.) By holding that the Hazardous Materials Statute supersedes the Prenatal Statute, the decision below more than triples the limitations period for prenatal or birth injury claims allegedly resulting from a hazardous material or toxic substance. Because the Hazardous Materials Statute permits minority tolling, plaintiffs with prenatal or birth injuries allegedly resulting from exposure to a hazardous material or toxic substance may file lawsuits 20 years after birth.

<http://www.cdph.ca.gov/ programs/CBDMP/Documents/MO-CBDMP-EstimatedAnnualBirthDefectsfor58Counties.pdf> (as of Nov. 3, 2014).

This lengthening of the applicable statute of limitations seriously upsets the settled expectations of countless businesses and other potential defendants across California, and severely prejudices their ability to defend themselves decades after alleged prenatal exposure when critical evidence is no longer available. The Legislature established the statute of limitations for prenatal or birth injury claims with the specific purpose of precluding minority tolling. And it has remained that way for more than seventy years. Indeed, it is difficult to imagine an expectation more firmly established than this one, at least with respect to limitations periods. Any change in that expectation should be made expressly by the Legislature, and not by a court interpreting a statute that is silent on the issue.

The Court of Appeal's ruling also creates inconsistency in the treatment of prenatal or birth injury actions that the Legislature never intended. After this ruling, such claims involving alleged exposure to a hazardous material or toxic substance will be governed by a 20-year limitations period under the Hazardous Materials Statute, while other prenatal or birth injury claims will be limited to 6 years under the Prenatal Statute. If the decision below stands, this discrepancy will result without any stated policy justification or any indication that the Legislature considered—let alone intended—such an anomalous result. And there is no good policy reason to differentiate (for purposes of minority tolling) between prenatal injuries allegedly caused by a hazardous material or toxic substance and those allegedly caused by, for example, a medical device or other product.

To the contrary, there are very good policy reasons for minority tolling *not* to apply to prenatal or birth injury actions. As the Court of Appeal explained in another case decided the same day as this one, "[s]tatutes of limitations are 'designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber

until evidence has been lost, memories have faded, and witnesses have disappeared.'" (*Studendorff v. National Semiconductor Corp.*, *supra*, 2014 WL 4783253, at *7 [quoting *Adams v. Paul* (1995) 11 Cal.4th 583, 592].) Allowing a 20-year limitations period is directly contrary to the very purposes underlying a statute of limitations.

II. The Court Of Appeal's Decision Is Wrong

This Court does "not presume that the Legislature intends, when it enacts a new statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied." (*Zamudio, supra*, 23 Cal.4th at p. 199; *see also Williams v. Los Angeles Metropolitan Transit Authority* (1968) 68 Cal.2d 599, 603 ["In the absence of express statutory provision, courts will not find an implied abrogation of long established principles"].) The Court of Appeal's decision contravenes this basic principle. In reaching its decision, the Court of Appeal held that, "[w]hile the Legislature did not expressly state that it enacted [the Hazardous Materials Statute] in denigration of—or as an exception to—[the Prenatal Statute], we think such a conclusion is necessarily implied from the broad language of [the Hazardous Materials Statute]." (Op. at 29 [citing *Zamudio, supra*, at p. 199].) This was error.

The Legislature's silence is not an indication that it intended to remove toxic-exposure claims previously subject to the Prenatal Statute from that statute's reach. Courts do not presume such a significant change from silence. (*E.g.*, *Anson v. Cnty. of Merced*, *supra*, 202 Cal.App.3d at p. 1202 ["because the Legislature did not address the potential conflict between the two statutes [of limitation], it intended [the previously existing statute] to remain in full force and effect"]; *Martell v. Antelope Valley Hosp. Med. Ctr.* (1998) 67 Cal.App.4th 978, 983 [applying previously existing statute of limitations where the Legislature "fail[ed] to make an

exception" in the later-enacted statute of limitations for claims falling within the scope of the earlier statute]; *see also supra*, p. 2.)[5]

Indeed, other courts have held that broadly applicable language—and the failure to include the existing statute among the exceptions to the later-enacted statute—is *not* sufficient to demonstrate legislative intent to supersede existing law. (*In re Michael G.* (1988) 44 Cal.3d 283, 294 [later-enacted statute that contained only three exceptions to its scope did not supersede pre-existing statute where the Legislature had not "expressly stat[ed]" an intent to supersede]; *Williams v. Los Angeles Metropolitan Transit Authority*, *supra*, 68 Cal.2d at p. 603 [later-enacted statute of limitations, which (i) applied to "any" suit against a public entity and (ii) exempted from its scope persons sentenced to imprisonment, did not override pre-existing statute tolling claims of minors because, "[i]n the absence of express statutory provision, courts will not find an implied abrogation of long established principles"]; *Juran v. Epstein* (1994) 23 Cal.App.4th 882, 897 [later-enacted statute, which enumerated the "only" three ways in which a contract to make a will may be established, did not override the pre-existing authority of a court to invoke the equitable estoppel doctrine to enforce such a contract where "the Legislature did not

[5] The Court of Appeal concluded that, since its analysis is "based on the plain text of Section 340.8" (op. at 32), it need not examine the legislative history. But in looking at the legislative history in the alternative, the Opinion acknowledged that the Legislature's purpose was to codify the discovery rule for toxic exposure cases. (*Id*. at 33.) The court then concluded that the Legislature "enact[ed] a new statute of limitations for civil actions for injury or illness based on exposures to toxic substances," and did not indicate that "a different limitations period apply if the exposure occurred before or during the plaintiff's birth." (*Id*.) But Section 340.8 did not alter the two-year limitations period for toxic exposure cases but only modified the applicable discovery rule by overruling a particular case. Accordingly, Section 340.8 cannot be characterized as a "new" statute of limitations.

express an intent to abolish the use of the equitable estoppel doctrine in appropriate circumstances"].)[6]

In reaching a contrary conclusion, the Court of Appeal relied primarily on this Court's decision in *Young v. Haines*, *supra*, 41 Cal.3d at p. 894. *Young* addressed whether an action for birth injuries resulting from alleged medical malpractice was governed by Civil Code Section 29, the predecessor to the Prenatal Statute, or the later-enacted statute of limitations for medical malpractice claims (Section 340.5). (*Id*. at p. 889.) The plaintiff in *Young* sought to apply the common law delayed-discovery rule of Civil Code Section 29, under which the plaintiff's claim would not be barred. The defendants argued that the claim was time-barred based on the more restrictive discovery rule under Section 340.5.

This Court noted that, "[o]n their face, both section 29 and section 340.5 appear to govern this case." (*Id*. at p. 891.) Recognizing the rule that specific statutes ordinarily trump general ones, this Court explained that, "[a]t first glance, that rule does not offer any guidance here . . . [because] [t]he two statutes on their face are equally specific. Section 29 governs all actions for prenatal and birth injuries . . . [and] Section 340.5 governs all actions for injuries caused by medical malpractice . . . ." (*Id*. at p. 894.)

The "cardinal rule" of statutory construction is "to ascertain and give effect to the intent of the Legislature." (*Id*.) To determine whether the Legislature intended Section 340.5 to override the common-law discovery

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[6] *See also Lungren v. Duekmejian* (1988) 45 Cal.3d 727, 735 ["[l]iteral construction [of statutory language] should not prevail if it is contrary to the legislative intent apparent in the statute[,]" and "[t]he intent prevails over the letter [which] will, if possible, be so read as to conform to the spirit of the act"]; *Dyna-Med, Inc. v. Fair Employment & Housing Commission* (1987) 43 Cal.3d 1379, 1387 ["Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation . . . [and] [b]oth the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent"].

rule of Section 29 for birth cases, the *Young* Court examined the language of the later-enacted Section 340.5 in light of the statute's purpose and legislative history. It noted that the preamble to the bill stated that Section 340.5 was "adopted as a response to a perceived 'major health care crisis in . . . California attributable to skyrocketing malpractice premium costs and resulting in a potential breakdown of the health delivery system.'" (*Id*.) It cited a law-review article stating that the Legislature's response to this perceived crisis included "changes in the rules applicable to personal injury actions by malpractice victims." (*Id*.) The Court concluded that "[t]he plain legislative intent . . . was to treat all malpractice victims differently from other personal injury victims." (*Id*.) Accordingly, *Young* concluded that Section 340.5 was "part of an interrelated legislative scheme enacted to deal specifically with all medical malpractice claims. As such, it is the later, more specific statute which must be found controlling . . . ." (*Id*.) With this context in mind, *Young* held that applying the more restrictive discovery rule of Section 340.5 was consistent with the Legislature's intent.

The Court of Appeal erred in its application of *Young* to this case. The Court of Appeal focused on three provisions in the text of Section 340.8. First, it noted that the Hazardous Materials Statute applies to "any" action for injury based upon exposure to a hazardous material or toxic substance. (Op. at 29.) But use of the term "any" in no way demonstrates an intent to override the Prenatal Statute. Indeed, it is hard to see how "any civil action," as used in the Hazardous Materials Statute, is materially broader than "[a]n action," as used in the Prenatal Statute. Both indicate inclusiveness, and neither implies the existence of an exception.

Second, the Court of Appeal looked to subdivision (d) of the Hazardous Materials Statute, which provides that "[n]othing in this section shall be construed to limit, abrogate, or change the law in effect on the effective date of this section with respect to actions not based upon

exposure to a hazardous material or toxic substance." (Op. at 29.) The Court of Appeal concluded that this provision suggests, by negative implication, that the Legislature *did* intend to supersede existing law for toxic exposure cases, but not other types of cases. (*Id*.) But this supposed negative implication is too thin a reed upon which to place a conclusion that the Legislature intended to more than triple the six-year limitations period that for decades has governed the type of claims at issue here.

Third, the Court of Appeal noted that Section 340.8, subdivision (c)(1) exempted from Section 340.8 claims covered by Sections 340.2 (addressing asbestos cases) and 340.5 (addressing medical malpractice cases), but did not similarly exempt the Prenatal Statute. (Op. at 27, 29.) But these exemptions are easily distinguished from the Prenatal Statute. Each of the statutes exempted from Section 340.8 establishes its own discovery rule.[7] Thus, their exemption is consistent with the legislative history, which indicates that the Legislature intended for Section 340.8 to alter the discovery rule for toxic exposure cases. In light of the Legislature's focus on discovery rules, there was no reason for it to mention the Prenatal Statute in Section 340.8, subdivision (c)(1), and its failure to do so carries no significance here. In any event, Section 340.8, subdivision (c)(1) does not constitute the sort of clear expression necessary "to overthrow long-established principles of law," including the long-established principle that prenatal and birth injury claims must be filed within 6 years after the plaintiff's birth, or else be time-barred. (*Zamudio*, *supra*, 23 Cal.4th at p. 199; *see also supra*, pp. 10-12).

* * * * *

Long ago, the California Legislature decided that lawsuits for prenatal or birth injuries must be brought within 6 years after a plaintiff's

[7] *See* Code Civ. Proc., §§ 340.2, subdivisions (a)(2) & (c)(2) [asbestos claims]; 340.5 [claims against health care providers].

birth, and rejected a court's suggestion that the limitations period might be tolled throughout the plaintiff's minority. The Prenatal Statute and its predecessor for decades have promoted justice by protecting California businesses from stale claims after memories fade, witnesses die or disappear, and records become difficult if not impossible to uncover. The decision below more than triples the limitations period for any prenatal or birth injury claim based on toxic exposure. This could expose California businesses to claims that otherwise have long been time-barred. And it will severely prejudice potential defendants in California who will be compelled to defend lawsuits after the passage of 20 years, at which point records will have been lost under established document retention policies (when the statute of limitations was 6 years), and witnesses will have died or disappeared. There is no indication that the Legislature intended for the Hazardous Materials Statute to make this dramatic change in the longstanding California law governing prenatal or birth injury claims. This Court should grant review to decide an important—indeed, case-dispositive—issue affecting an untold number of personal-injury cases.

CONCLUSION

For the foregoing reasons, the Court should grant review.

Dated: November 4, 2014. ARNOLD & PORTER LLP

By /s/ *Maurice A. Leiter*
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Western Digital Corporation

CERTIFICATE OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.504(d)(1)

I certify that this Petition for Review, exclusive of those materials not required to be counted under Rule 8.504(d)(3), contains 4,698 words. This certificate is based on the word count generated by the computer program used to prepare this brief.

Dated: November 4, 2014. /s/*Maurice A. Leiter*
Maurice A. Leiter

PROOF OF SERVICE

I am over eighteen years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is Three Embarcadero Center, 10th Floor, San Francisco, California 94111.

On November 4, 2014, I served the **PETITION FOR REVIEW** on the following person(s):

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

☐ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: November 4, 2014

/s/ *Jane Rustice*
Jane Rustice