

S235357

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

DOMINIQUE LOPEZ,

Plaintiff, Appellant, and Petitioner,

vs.

SONY ELECTRONICS, INC.,

Defendant and Respondent.

After A Decision By The Court Of Appeal,
Second Appellate District, Case No. B256792;
Los Angeles County Superior Court, Case No. BC476544

**PETITIONER'S CONSOLIDATED ANSWER TO AMICUS CURIAE
BRIEFS FILED ON BEHALF OF RESPONDENT**

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Plaintiff, Appellant, and Petitioner Dominique Lopez (Dominique) hereby submits this consolidated answer to the amicus curiae briefs filed on behalf of Defendant and Respondent Sony Electronics, Inc. (Defendant Sony or Sony).¹

CONSOLIDATED ANSWER

As this Court has explained, in theory, “[a]mici curiae, literally ‘friends of the court,’ perform a valuable role for the judiciary precisely because they are nonparties who often have a different perspective from the principal litigants.” (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1177.) Reality, however, is very different.

As observed by Professor Helen A. Anderson, although nonparties, amici curiae “are nevertheless advocates” whose participation in the appellate process “has surged in recent years, primarily by interest and advocacy groups wishing to advance their law reform efforts and to gain publicity.” (Anderson, *Frenemies of the Court: The Many Faces of Amicus Curiae* (2015) 49 U. Rich. L.Rev. 361, 362, fn. omitted (*Frenemies*).) Indeed, “the term amicus – friend – seems to obscure the reality of the

¹ Three amicus curiae briefs have been filed on behalf of Defendant Sony by the following entities or groups of entities: (1) Western Digital Corporation; (2) The Product Liability Advisory Council, Inc.; and (3) Chamber of Commerce of the United States of America, American Insurance Association, Association of Southern California Defense Counsel, and Civil Justice Association of California.

amicus curiae participation today.”² (*Id.* at p. 363.) Such is the case here.

Defendant Sony’s amici share the same perspective as Sony and devote themselves to rehashing the same arguments made by Sony in its answer brief on the merits as to why the statute of limitations applicable to a claim for prebirth injuries based on exposure to a hazardous material or toxic substance is Code of Civil Procedure section 340.4,³ not section 340.8. Indeed, amicus Western Digital Corporation was the defendant in *Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, where the Court of Appeal held that section 340.8 is the applicable statute of limitations,⁴ (*id.* at pp. 1528, 1539-1540, 1543-1551), a holding that the majority in the Court of Appeal in this case disagreed with, (typed maj. opn. at p. 2; *Lopez v. Sony Elecs., Inc.* (2016) 247 Cal.App.4th 444, 447), creating the decisional split that this Court will resolve.

² As Professor Anderson notes: “It is the Friend of a Party category of amicus curiae whose participation has grown the most over the last century, especially in recent decades. This is the prototypical amicus curiae that now springs to mind when we hear the term. We think of an interest or advocacy group, induced to participate because the issue is important to its membership. Friend of a Party amici curiae may also hope that amicus participation will serve their efforts to gain visibility. Amicus briefs become another means of lobbying on behalf of the membership. [¶] Friend of a Party briefs can also be a part of a coordinated law reform effort.” (*Frenemies*, at p. 379.)

³ All undesignated statutory references are to the Code of Civil Procedure.

⁴ As Western Digital Corporation notes in its amicus brief, (Br. at p. 6), this Court denied its petition for review in *Nguyen* (S222377, review denied Dec.17, 2014).

The practice of filing amicus curiae briefs that are duplicative of party briefing has been condemned as “an abuse.” (*Ryan v. Commodities Futures Trading Comm’n* (7th Cir.) 125 F.3d 1062, 1063.) As explained by Chief Judge Posner:

The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigant’s brief. Such amicus briefs should not be allowed. They are an abuse. The term “amicus curiae” means friend of the court, not friend of a party.

(*Ibid*; see *Sierra Club, Inc. v. Environmental Prot. Agency* (7th Cir. 2004) 358 F.3d 516, 518 [“[T]he Chamber favors more business and less environmental regulation. That does not justify intervention. Indeed, it does not necessarily justify even a filing as *amicus curiae*. Courts value submissions not to see how the interest groups line up, but to learn about facts and legal perspectives that the litigants have not adequately developed.”]; *Voices for Choices v. Illinois Bell Tel. Co.* (7th Cir. 2003) 339 F.3d 542, 544-545 [“No matter who a would-be amicus curiae is, therefore, the criterion for deciding whether to permit the filing of an amicus brief should be the same: whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs. . . . In my experience in two decades as an appellate judge, however, it is very rare for an amicus curiae brief to do more than repeat in somewhat different language the arguments in the brief

of the party whom the amicus is supporting. Those who pay lawyers to prepare such briefs are not getting their money's worth."].)

Accordingly, because Dominique has already addressed the arguments made by Defendant Sony's amici in her merits briefs, she sees no reason to burden the Court by restating her arguments here, and she hereby incorporates and relies on her merit briefs to avoid unnecessary repetition.

Dated: June 23, 2017

Respectfully submitted,

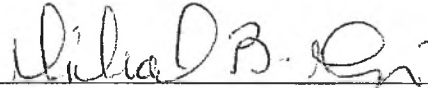
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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.520(c)(1), the undersigned hereby certifies that this Petitioner's Consolidated Answer to Amicus Curiae Briefs Filed on Behalf of Respondent contains 856 words, exclusive of the cover page, tables, signature block, and this certification, as counted by the Microsoft Word word-processing program used to generate it.



Michael B. Gurien
State Bar No. 180538

PROOF OF SERVICE

Dominique Lopez, Plaintiff, Appellant, and Petitioner
vs.
Sony Electronics, Inc., Defendant and Respondent

Supreme Court Case No. S235357
Court of Appeal, Second Appellate District Case No. B256792
Los Angeles Superior Court Case No. BC476544

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Deborah Ristovski, declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 222 North Sepulveda Boulevard, Suite 1900, El Segundo, California. I am employed in Los Angeles County, California.

On June 23, 2017, I served a copy of the following document(s):

- **PETITIONER'S CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS FILED ON BEHALF OF RESPONDENT**

in this action to be served by placing the true and correct copies thereof enclosed in sealed envelopes addressed as stated as follows:

- (By Mail) I caused each envelope with postage fully prepaid, to be placed in the United States Mail at El Segundo, California to:

SEE ATTACHED SERVICE LIST

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S.

Postal Service on that same day with postage thereon fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

Executed on June 23, 2017 at El Segundo, California.

A handwritten signature in black ink, appearing to be 'Deborah Ristovski', written over a horizontal line.

Deborah Ristovski

SERVICE LIST

Dominique Lopez, Plaintiff, Appellant, and Petitioner

vs.

Sony Electronics, Inc., Defendant and Respondent

Supreme Court Case No. S235357

Court of Appeal, Second Appellate District Case No. B256792

Los Angeles Superior Court Case No. BC476544

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