Case No. S235357

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

DOMINIQUE LOPEZ, by and through her guardian ad litem, Cheryl Lopez,
Plaintiff and Appellant,

vs.

SONY ELECTRONICS, INC.,
Defendant and Respondent.

After a Decision by the Court of Appeal
for the Second Appellate District, Division 8
Case No. B256792

On Appeal from the Superior Court
for the County of Los Angeles
Hon. Frederick C. Shaller
Case No. BC 476544

AMICUS CURIAE BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF POSITION OF DEFENDANT/RESPONDENT SONY ELECTRONICS, INC.

HUGH F. YOUNG, JR.
THE PRODUCT LIABILITY ADVISORY COUNCIL, INC.
1850 Centennial Park Drive,
Suite 510
Reston, VA 20191
(703) 264-5300

ALAN LAZARUS (#129767)
DRINKER BIDDLE & REATH, LLP
50 Fremont Street, 20th Floor
San Francisco, CA 94105
(415) 591-7500

Attorneys for the Product Liability Advisory Council, Inc., *Amicus Curiae*

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, amicus states as follows:

The Product Liability Advisory Council, Inc. is a non-profit association with no parent or subsidiary corporations. No publicly held company owns 10% or more of its stock.

I.

ISSUE PRESENTED

In an action for prenatal injury allegedly resulting from a toxic exposure, which statute of limitations applies: California Code of Civil Procedure § 340.4, which governs actions for prenatal and birth injuries, or California Code of Civil Procedure § 340.8, the limitations period for injuries caused by toxic exposure?[1]

II.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Product Liability Advisory Council (PLAC) is a non-profit corporation with 91 corporate members representing a broad range of American and international manufacturers. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (i.e., non-voting) members. PLAC seeks to contribute to the improvement and reform of law in the United States and elsewhere with emphasis on the laws governing and influencing liability of product manufacturers. To that end, PLAC submits *amicus curiae* briefs in cases involving significant legal issues to present

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[1] Unless otherwise specified, all statutory references are to the Code of Civil Procedure.

the broad perspective of product manufacturers, seeking fairness and balance in the development and application of the law. Since 1983, PLAC has submitted over 1100 amicus briefs in state and federal courts, including many in this Court.

PLAC submits this brief to assist this Court in analyzing the issue set forth above.

III.

NATURE OF THE CASE

This product liability/toxic tort case presents a conflict between two facially applicable limitations statutes. One statute governs prenatal and birth injuries (Section 340.4) and the other governs injuries caused by exposure to toxic or hazardous substances (Section 340.8). The issue is which statute prescribes the period to sue for birth defects allegedly caused by prenatal exposure to chemicals. The Second District Court of Appeal, Division 8, held that Section 340.4 sets the limitations period, thereby enforcing the express legislative direction in Section 340.4 that claims for prenatal injuries are not to be extended by tolling under Section 352. In doing so, the court disagreed with and declined to follow a contrary decision by the Sixth District, *Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522.

This Court granted Review.

IV.

SUMMARY OF ARGUMENT

The Second District's opinion is better reasoned and more consistent with the legislative intent. In *Nguyen*, the Sixth District abrogated the expressed legislative intent of Section 340.4 that actions for prenatal injuries not be tolled during the plaintiff's minority, without any clear and convincing basis to conclude the Legislature, in enacting Section 340.8, had changed its mind. Violating established principles of statutory interpretation, the court chose to apply a more general statute over a preexisting, narrower statute, failed to reconcile the two statutes, and disturbed the Legislature's policy balance reflected in Section 340.4.

The Second District panel got it right. The conflict between the two statutes generated ambiguity which the court properly resolved by determining the legislative intent behind the two statutes. In doing so, the court preserved the policy balance desired by the Legislature by enforcing its prohibition on tolling and avoided reaching an absurd and unintended result, in the form of a drastic extension of the time to file suit.

Plaintiff's arguments for reversal are internally inconsistent, unsupported by the legislative history, and unpersuasive. This Court should affirm.

V.

DISCUSSION

A. The *Nguyen* Opinion Frustrates Legislative Intent By Allowing Minority Tolling For Claims Based On Prenatal Injuries And Significantly Extending The Time To File Birth Defect Claims When They Are Based On Chemical Exposures

Statutes of limitation represent a complex balancing of competing interests. *Pooshs v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797. Their operation implicates several public policies, including:

- The right of defendants to repose,
- the abhorrence of stale claims,
- the impairment of reliability in adjudication caused by the inevitable and progressive degradation or loss of evidence over time,
- encouraging diligence by potential claimants,
- allowing sufficient time for injured parties to investigate and evaluate their legal rights, and
- promoting adjudication of claims on the merits.

Over the years, this Court has frequently addressed issues related to the operation of limitations periods and their impact on these policies. *See, e.g., Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395 and cases cited

therein.[2] These various decisions illustrate the importance of a carefully calibrated framework for limitations period accrual. *See, e.g., Norgart*, 21 Cal.4th at 396–397 (the establishment of rules affecting the length of the limitations period, such as defining the point of accrual, "entails the striking of a balance between the [applicable underlying policies]."); *Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 900 (the issue in discovery rule accrual is whether or not "the right to be free of stale claims ... comes to prevail over the right to prosecute them.").

In enacting in 1941 (and later reenacting) what is now Section 340.4, the Legislature struck a balance between the policies for all cases where the plaintiff's alleged injury is inflicted at or prior to birth. The Legislature decided to confer a relatively long period to file suit, six years, but a relatively finite one, because tolling for the plaintiff's minority (a status which is ordinarily present in such cases) was specifically precluded. The linchpin of this balance was

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[2] *See also, e.g., Miller v. Bechtel Corp.* (1983) 33 Cal.3d 868 (fraud); *Huysman v. Kirsch* (1936) 6 Cal.2d 302 (medical negligence); *Whitfield v. Roth* (1974) 10 Cal.3d 874 (medical negligence); *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176 (legal negligence); *Brown v. Bleiberg* (1982) 32 Cal.3d 426 (medical negligence); *Davies v. Krasna* (1975) 14 Cal.3d 502 (breach of confidence and misappropriation); *Larcher v. Wanless* (1976) 18 Cal.3d 646 (wrongful death); *Regents of Univ. of Calif. v. Hartford Acc. & Indem. Co.* (1978) 21 Cal.3d 624 (construction defects).

the Legislature's express determination that under no circumstances should claims for prenatal or birth injuries be extended by tolling for the plaintiff's minority.

In *Nguyen*, the Sixth District decided that a later-enacted statute generally governing the prescriptive period for claims of injury arising from toxic exposures, Section 340.8 – which does not exclude elongation for minority tolling – silently trumps the Legislature's policy balance when a birth defect injury is alleged to have been caused by chemical exposure.

The core failing of *Nguyen* is that there is no persuasive reason to believe the Legislature intended in Section 340.8 to alter the existing balance as to birth injury claims simply because the alleged means of injury is a toxic exposure.

The text of Section 340.4 applies without limitation to "an action by or on behalf of a minor for personal injuries sustained before or in the course of his or her birth ..." Prenatal and birth injuries, whatever their cause, is a relatively slender specie of claims, applicable to a well-defined population of plaintiffs injured in a finite time period. This narrow sphere is the territory allotted for application of Section 340.4. This specie of claims is *not* to be tolled for minority. So said the Legislature.

Section 340.8, on the other hand, is more general and broad in its scope. It applies to a considerably larger

population of plaintiffs (anyone injured at any time by a non-asbestos chemical exposure) as long as the injury is not predicated on medical malpractice. The statute does not address minority tolling, and such silence has been judicially interpreted to allow minority tolling for claims falling within its scope. *Young v. Haines* (1986) 41 Cal.3d 883, 892-93.

As the Second District panel recognized, this scenario presents an area of facial overlap, and therefore conflict, between the two statutes – a birth defect claim allegedly caused by a toxic exposure. Under these circumstances, the role of the court is to give each statute its appropriate scope and to divine and enforce the legislative intent. *People v. Albillar* (2010) 51 Cal.4th 47, 54-55. The established interpretative principles are that (1) the Legislature is presumed to mean what it says, (2) the meaning and scope of the older statute (Section 340.4) is presumed unchanged absent compelling evidence that the Legislature intended to do so, and (3) that the narrower statute is presumed to trump the broader, or more general statute. Further, (4) where two statutes can be construed to harmoniously coexist, they should be so construed. *See, e.g.,* (1) *People v. Lawrence* (2000) 24 Cal.4th 219, 230-21; (2) *In re Michael G.* (1988) 44 Cal.3d 283, 294; (3) *Basurto v. Imperial Irrigation*

Dist. (2012) 211 Cal.App.4th 866, 882; (4) *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 986.

Each of these principles leads to the conclusion that "an action by or on behalf of a minor for personal injuries sustained before or in the course of his or her birth" shall be governed by Section 340.4 and its six year limitations period, "and the time the minor is under any disability mentioned in Section 352 shall not be excluded in computing the time limited for the commencement of the action." They confirm that when the Legislature later enacted Section 340.8, it did not *sub silentio* carve out of the statute's scope of operation birth defects from toxic exposures.

- The unequivocal intent of Section 340.4 was to prescribe the limitations period governing prenatal and birth injuries, and to preclude the lengthy extension of the period that would occur if minority tolling were applied to these claims.
- Section 340.4 and its predecessor predate the enactment of Section 340.8 by 63 years.
- There is no language in Section 340.8 which communicates an intent to cover claims for birth defects or to alter the scope of Section 340.4.
- In covering only claims by individuals injured in gestation or birth, Section 340.4 is narrower in scope than Section 340.8.
- The two statutes can reasonably be reconciled, by applying Section 340.4 to all claims for birth defects , and applying Section 340.8 to all

injuries caused by chemical exposures occurring after the plaintiff's birth.

In construing the two statutes, *Nguyen* overlooked the critical point that in Section 340.4, the Legislature said, unequivocally, that there should be no minority tolling as to claims for prenatal and birth injuries. By nevertheless applying Section 340.8 to such claims, it squarely contradicted that clearly expressed intent. The core difference in the decision under review is that the Second District recognized that intent, required a clear and compelling reason to believe the Legislature meant to change that status quo, carefully evaluated the Legislature histories, and failed to find any reason to believe the Legislature had changed course in enacting Section 340.8. That methodology is beyond reproach, and its execution here was reliable and appropriate.

In sum, nothing in Section 340.8 persuasively suggests it was intended to invade the territory of Section 340.4 and subject claims for prenatal injuries due to exposure to toxic substances to the drastic extension available for minority tolling. Giving both statutes their due respect, Section 340.8 applies to injuries caused by toxic exposures which occur *after* the plaintiff is born and allows such claims to be tolled while the injured plaintiff remains a minor. Section 340.4, on the other hand, continues to apply to prenatal injuries, whatever their alleged cause, and these

claims are subject to a longer baseline period, but one which is not radically extended by minority tolling. The Sixth District overlooked this simple solution to the statutory conflict and instead adopted a strained imputed intent to Section 340.8 which frustrates the clear and express legislative intent in Section 340.4 and impermissibly carves an unexpressed exception out of the latter.

B. The Second District Properly Honored The Legislature's Intent That Minority Tolling Not Be Applied To Extend The Limitations Period For Prenatal And Birth Injuries And Properly Rejected Plaintiff's Arguments

The critical flaw of the Sixth District in *Nguyen* (and the dissent in this case) is the failure to honor the highest principle of legislative interpretation: That the clear intent of the Legislature be enforced.

The Legislature spoke clearly and purposefully when it amended Section 340.4 in 1941. In response to a court of appeal decision suggesting that the then-one year statute of limitations for prenatal and birth injuries would be tolled during the plaintiff's minority, *Scott v. McPheeters* (1939) 33 Cal.App.2d 629, 631, the Legislature amended then-Civil Code §29 to (1) increase the limitations period for such claims by a factor of 6, but (2) preclude any tolling under Section 352 for the plaintiff's minority. The intent and meaning of the amendment as to tolling was unequivocal and indisputable:

> ... the time the minor is under any disability mentioned in Section 352 shall not be excluded in computing the time limited for the commencement of the action. [§340.4]

This genesis and language reflects a specific policy decision that the limitations period for prenatal and birth injury claims should be extended, but not dramatically extended by operation of minority tolling. *See Olivas v. Weiner* (1954) 127 Cal.App.2d 597, 599. The Legislature has never found it necessary to revisit that decision.

Under these circumstances, the legislative intent that there be no minority tolling of claims for prenatal and birth injuries remains clear and remains effective, and any determination that a subsequent statute on a different subject has encroached and limited the existing rule must clearly evince an intent to do so. *Stop Youth Addiction, Inc. v. Lucky Strikes Stores, Inc.* (1998) 17 Cal.4th 553, 569. Section 340.8 expresses no contrary intent and therefore does not in any way modify or diminish the certitude or scope of the legislative balance struck in Section 340.4.

The Second District decision in this case is based on its review of the text and history of the two statutes and its well-reasoned conclusion that Section 340.8 fails to clearly demonstrate that the Legislature intended to change direction. Section 340.8 simply yields no compelling inference that the Legislature intended to (1) shorten the baseline limitations period by four years but (2) extend the

period through minority tolling when the birth defect happens to be caused by chemical exposure.

In addition to the clear language of Section 340.4 and the absence of any contrary language of purpose in Section 340.8, the court supported its conclusion with a straightforward application of secondary interpretative principles. Because the law abhors repeal by implication, it requires that an intent to do so be unmistakable and further requires that two conflicting statutes be harmonized and reconciled to the extent reasonably possible. An intent to partially repeal Section 340.4 could not be clearly implied from any language in section 340.8; indeed, the actual expression of intent in the legislative history revealed the latter statute was the product of a narrow and entirely different focus – to assure application of the delayed discovery rule in toxic exposure cases and to modify operation of that rule by overruling the decision in *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151 (holding that inquiry notice triggering the limitations period under delayed discovery could be imputed based solely on media reports).

Having described what it was trying to do, and having failed to mention minority tolling or prenatal claims at all, there was simply no adequate basis to conclude that Section 340.8 was intended to modify the six decades-long rule that prenatal injury claims were not subject to minority tolling.

As the court put it, "We are not persuaded the Legislature intended to make such a big change in such an obscure way."

The court further found that the interpretation proffered by Plaintiff (and *Nguyen* and the dissent) failed to honor the mandate that the court harmonize the two statutes.

Plaintiff offers no compelling reason to reverse. First, Plaintiff argues that it was improper for the court to examine and rely on legislative history because the application of Section 340.8 to prenatal injury claims is clear from the language of that statute. But this conspicuously violates the principle that statutes are not to be interpreted in isolation. *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276. The court properly looked at *both* statutes, found them both *facially* applicable to prenatal claims based on alleged toxic exposure, and recognized the obvious – that their concurrent application in this scenario potentially overlapped, generating ambiguity. Such ambiguity required the court to dig further and examine the legislative history in order to perform its fundamental mission of determining what the Legislature intended. The court did just that.

Next, Plaintiff relies on Section 340.8(d)'s statement that it was not intended to change existing law. But it means just that – it was not intended to change the law

regarding the time to bring a suit for prenatal and birth injuries. It does not mean, as Plaintiff argues, that it *did* intend to change all existing laws to the extent claims involved toxic exposures. That interpretation alters the plain meaning of the language; at minimum, it falls well short of the compelling inference needed to justify a partial repeal by implication.

Plaintiff further argues that Section 340.8 trumps the earlier statute because it is a later, narrower statute. Later it undeniably is. But as discussed above, Section 340.4 covers only a small patch of the landscape – injuries caused during the limited period of gestation and birth to a very limited class of plaintiffs. Section 340.8 purportedly covers all claims accruing at any time by any person under any circumstances, as long as it was caused in part by some sort of toxic exposure. The argument that Section 340.8 is narrower than Section 340.4 is fallacious.

Nevertheless, Plaintiff maintains her argument is supported by *Young v. Haines, supra,* 41 Cal.3d 883, a decision holding that prenatal and birth injury claims based on medical malpractice were governed by Section 340.5 rather than Section 340.4. But as the Second District reasoned here, *Young* is distinguishable because Section 340.5 and Section 340.8 are not alike. The medical malpractice statute was intended to broadly govern all aspects of claims for medical malpractice, unlike the limited

purpose of Section 340.8. And in contrast to section 340.8's complete silence on the subject of minority tolling, the medical malpractice provision specifically addressed the accrual of minors' claims. *Young* provides Plaintiff no support.

Finally, Plaintiff relies on the *expressio unius* canon, as Section 340.8 exempts claims based on asbestos exposure and medical malpractice, but fails to expressly exempt claims for prenatal and birth injuries. Plaintiff fails to acknowledge, however, that this argument is flatly inconsistent with her primary argument that the language of the statute clearly reveals the Legislature's intent – making resort to legislative history unnecessary and inappropriate. Resort to semantic inference canons like *expressio unius* is unnecessary and improper where the statutory language or legislative purpose is clear. *People v. Cruz* (1996) 13 Cal.4th 464, 782.

In any event, the argument again ignores the clear language of Section 340.4 and the legislative intent that minority tolling not be applied to extend the limitations period for prenatal claims. As a secondary interpretive principle, the canon is used only to determine the Legislative intent; it cannot be invoked in derogation of a known legislative purpose. *See Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391.

Moreover, Plaintiff's balkanized interpretation of Section 340.8 runs afoul of another canon, because it would lead to an absurd result. Based on Plaintiff's interpretation, birth defect injury claims based on prenatal exposure to asbestos would need to be filed within one year of discovery; those based on prenatal exposure to all other toxic substances could be filed *twenty years* after discovery; and all other birth defect claims must be filed within six years of discovery. The twenty year outlier is impossible to reconcile with the intent behind the 1941 enactment of Section 340.4 (*Olivas*, 127 Cal.App.2d at 599), which has never been questioned. It is also absurd to believe that the Legislature intended Section 340.8 to lengthen the period to file suit for chemically-caused birth defects by almost two decades, without specifically saying so.

In contrast, the Second District's reasoning here is persuasive. It interprets section 340.4 in a manner that protects and preserves the intent of the Legislature and harmonizes the provisions of the two statutes, while avoiding an absurd consequence the Legislature did not and could not have intended. It rejects applying a canon intended to help discern legislative intent so as to defeat the expressed intent of the Legislature. And it declines to find a repeal by implication when there is no compelling reason to believe that a repeal was intended or even foreseen. This Court should affirm.

C. Prolonging The Period To File Suit For Birth Defects By Allowing Minority Tolling Would Drastically Disturb The Balance Struck By The Legislature In Section 340.4 And Undermine The Legislature's Goal Of Protecting Defendants From Stale Claims Involving Alleged Birth Defect Injuries

As noted above, the setting of a limitations period and specifying the applicable rules of accrual and tolling are a complex blend of trade-offs among multiple factors that result in an exquisitely delicate public policy balance. It is certainly no coincidence that in 1941, at the same time the Legislature substantially extended the limitations period from one to six years, it also prohibited any tolling for the plaintiff's minority pursuant to Section 352. Section 340.4 was the balance struck by the Legislature based on its considered view of the applicable policy considerations. *See Olivas*, 127 Cal.App.2d at 599.

Thus, in amending the statute, the Legislature made three policy determinations:

1. Claims for injuries caused during prenatal development and birth must be brought within six years of the injury (or discovery of the injury).

2. The six year period must not be tolled for plaintiff's minority (or insanity).

3. This relatively long but relatively finite period best accommodates the plaintiff's right and ability to investigate and prosecute claims for prenatal or birth injuries *and* the defendants'

> rights to repose and fair, reliable adjudication, as well as the needs of the legal system.

The decision in *Nguyen* and the position of the dissent here, that birth defect claims based on alleged toxic exposures are governed by the nominally shorter but practically far lengthier period of Section 340.8, disrupts this balance. It encourages plaintiffs to sit on their rights. It imposes substantial additional burdens on defendants, without meaningfully advancing – in fact, significantly compromising – their interest in legitimate and *reliable* dispositions on the merits.

Consider this alternative hypothetical: If Section 340.4 applies to an individual injured *in utero* by chemical exposure, and the injury and its cause is discovered on the plaintiff's second birthday, then the suit must be brought no later than the plaintiff's eighth birthday. But if Section 340.8 were applied to the same scenario, then the suit need not be brought until the plaintiff's twentieth birthday. Failing to enforce the Legislature's intent to preclude minority tolling lengthens the prescriptive period by twelve years, trebling the period to file suit and the corresponding risk of loss or degradation of evidence.

Accordingly, this is not a *de minimis* frustration of what the Legislature intended. An already lengthy period to assert legal rights (6 years after discovery) is essentially tripled. Significant additional burdens are imposed on the

defendant's right of repose and ability to gather and secure critical evidence in its defense, impairing the ability of a jury to reach a reliable determination of the truth, and ultimately producing an erosion of confidence in the fair and accurate operation of our legal system. The interest in dispositions on the merits is not meaningfully advanced when the adjudication is based on a degraded and incomplete evidentiary picture due in part to plaintiffs sitting on their rights. And the interest in encouraging claimants to diligently investigate and prosecute their legal rights is severely compromised.

These are not abstract or academic consequences. Product manufacturers necessarily generate a large volume of documents and information in the ordinary course of business, necessitating the setting and implementation of reasonable document retention policies. With the increasing passage of time, documents and data relevant to product safety become less and less available. To lengthen document retention periods and require manufacturers to stockpile an even greater volume of documents and information, combined with the modern demands of electronic discovery, would exponentially expand the burdens and costs of litigation, and consequently the cost of doing business.

Perhaps more importantly, the passage of time also increases the natural attrition and mobility of the work

force, making the authors of documents and individuals with critical knowledge of the products and programs increasingly unavailable. There is no remedy for the inevitable fading of memories and the loss of knowledgeable witnesses that comes with a lengthy extension of the time to sue.

These tangible, real world, oppressive effects of a substantially lengthened limitations period will impact a wide array of California businesses. It is one thing for the Legislature to strike a knowing balance, to consider these concerns and find the overall mix of policy considerations to justify these added burdens. It is quite another for the courts to impose that balance by imputing this will to the Legislature when it has not been clearly expressed, through artificial statutory construction assumptions. *See Van Horn v. Watson* (2008) 45 Cal.4th 322, 333 ("We do not presume that the Legislature intends, when it enacts a statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied."). Such a drastic recalibration of the implicated policy interests should not result from questionable implications drawn by a court based on legislative silence and ambiguous statutory language, especially when the Legislature had long ago clearly and forcefully declared a contrary desire. And as the court of appeal here noted, *a*

fortiori when the Legislature's expressed goal in enacting section 340.8 appeared directed to another issue entirely.

There is no reason to believe that the result reached in *Nguyen* and advocated by Plaintiff is what the Legislature intended; there is compelling reason to believe it is not.

VI.

CONCLUSION

The court of appeal properly declined to follow *Nguyen*. That decision ignored the pre-existing intent of the Legislature that the period to bring claims for prenatal and birth injuries not be tolled, and the severe consequences to the delicate balance of interests which comprise a statute of limitations. And it did so for a specie of claims where the loss of critical evidence can be devastating to truth-seeking, and the damages sought can be quite substantial.

The Second District's decision, in contrast, honors the Legislature's intent that prenatal and birth injury claims be exempted from minority tolling and instead filed no later than six years after the injury or the discovery of the injury and its negligent cause.

For the foregoing reasons, *amicus curiae* Product Liability Advisory Council, Inc. requests that this Court affirm the court of appeal and hold that prenatal and birth injury claims, whether or not claimed to arise from exposure to a toxic substance, are governed by the six year statute of

limitations in section 340.4 and are not to be extended by the application of minority tolling pursuant to section 352.

DATED this 16 day of May, 2017.

By: _____

ALAN J. LAZARUS (SBN 129767)
DRINKER BIDDLE & REATH LLP
50 Fremont Street, 20th Floor
San Francisco, CA 94105-2235
(415) 591-7551

HUGH F. YOUNG, JR.
THE PRODUCT LIABILITY ADVISORY COUNCIL, INC.
1850 Centennial Park Drive, Suite 510
Reston, VA 20191
(703) 264-5300

ATTORNEYS FOR *AMICUS CURIAE*
THE PRODUCT LIABILITY ADVISORY COUNCIL, INC.

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court § 14(c)(1), the word count of the foregoing brief is 4,489 words, calculated using the word count feature of Microsoft Word 2010.

Dated: May 16, 2017

Respectfully submitted,
DRINKER BIDDLE & REATH LLP

ALAN J. LAZARUS

Attorneys for *Amicus Curiae*
PRODUCT LIABILITY
ADVISORY COUNCIL, INC.

CERTIFICATE OF SERVICE

I, CONNIE GUTIERREZ, declare that:

I am at least 18 years of age, and not a party to the above-entitled action. My business address is 50 Fremont Street, 20th Floor, San Francisco, California 94105, Telephone: (415) 591-7500.

On May 16, 2017, I caused to be served the following document(s):

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by enclosing a true copy of (each of) said document(s) in (an) envelope(s), addressed as follows:

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San Francisco, CA 94102-4783

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Michael B. Gurien, Esq.
WATERS KRAUS & PAUL
222 North Sepulveda Boulevard
Suite 1900
El Segundo, CA 90245

Attorneys for Plaintiff, Appellant, and Petitioner Dominque Lopez 1 copy via U.S. Mail

---

CALIFORNIA COURT OF APPEAL
Second Appellate District, Div. 8
c/o Office of the Clerk
300 South Spring Street
Second Floor, North Tower
Los Angeles, CA 90013-1213

1 copy via U.S. Mail

The Honorable Frederick C. Shaller
LOS ANGELES SUPERIOR COURT
c/o Office of the Clerk
111 North Hill Street
Department 46
Los Angeles, CA 90012

1 copy via U.S. Mail

WILLIAM A. BOSSEN
MUSICK, PEELER & GARRETT LLP
One Wilshire Boulevard
Suite 2000
Los Angeles, CA 90017

Attorneys for Defendant Sony Electronics, Inc.

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

Executed on May 16, 2017 at San Francisco, California.

CONNIE GUTIERREZ

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