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Case No.
S235357

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOMINQUE 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 Second Appellate District, Div. 8
Case No. B256792

Los Angeles County Superior Court, Case No. BC476544
Honorable Frederick C. Shaller

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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I. INTRODUCTION

The claims at issue are time barred, the trial court properly granted summary judgment in favor of Defendant and Respondent SONY ELECTRONICS, INC. ("Sony"), and the Second Appellate District correctly affirmed that judgment. Plaintiff and Appellant DOMINIQUE LOPEZ ("Plaintiff") filed this action more than six years after the limitations period had run on her claims of prenatal personal injuries.

California Code of Civil Procedure ("C.C.P.") § 340.4 provides that an action for prenatal injuries must be commenced within six years after the date of birth. The only applicable exception is the "discovery rule," which tolls the accrual of the limitations period during the time the plaintiff does not suspect or have reason to suspect wrongdoing. Section 340.4 expressly precludes any tolling during the minority of the plaintiff which would otherwise be available under C.C.P. § 352.

Plaintiff was born on April 13, 1999. The undisputed facts presented in Sony's motion for summary judgment established that Plaintiff's mother, Cheryl Lopez, had an actual suspicion upon Plaintiff's birth that the chemicals to which Ms. Lopez was allegedly exposed had caused Plaintiff to incur birth defects. Certainly, Ms. Lopez had such suspicion no later than February 2000, when she filed a workers' compensation claim alleging prenatal chemical exposure had caused Plaintiff's condition.[1] Plaintiff had six years from her date of birth, no later than April 12, 2005, within which to file this action. Even assuming the limitations period began to run when Ms. Lopez filed her workers' compensation claim in February 2000,

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[1] It should be clear that Sony denies any of Plaintiff's claimed injuries or birth defects were caused by any chemical exposure created by Sony, or other acts or omissions of Sony. However, because Plaintiff's claims are time barred, as the trial court and Court of Appeal correctly ruled, there is no need for this case to reach a resolution on the merits.

Plaintiff was required to file this action no later than February 2006. Instead, Plaintiff filed this action nearly thirteen years after her birth, on January 6, 2012. This action is time-barred.

In her opposition to Sony's motion for summary judgment, Plaintiff did not submit any evidence or otherwise attempt to raise any triable issue that would support a tolling of the limitations period under the discovery rule. Rather, Plaintiff's sole argument in opposition to Sony's summary judgment motion, as in her argument before the Second Appellate District and this Court, is that C.C.P. § 340.8 applies to her claims, which is subject to tolling under section 352.

In her Opening Brief, Plaintiff relies heavily on the Sixth Appellate District's decision *Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, and the dissent in the Court of Appeal's decision in this case. In the *Nguyen* opinion, the Sixth Appellate District held that section 340.8 applies to prenatal injuries caused by exposure to hazardous material or toxic substances. The *Nguyen* court also held the limitations period of section 340.8 is tolled during the plaintiff's minority under section 352. The dissent in the Court of Appeal's decision in this case largely adopted the reasoning in *Nguyen.*

In reality, then, the import of the *Nguyen* decision and the dissent in this case is that C.C.P. § 340.8 more than triples a plaintiff's time to file an action alleging prenatal injuries caused by exposure to a hazardous material or toxic substance (from six years to effectively 20 years), while a plaintiff alleging prenatal injuries caused by anything else must file an action within six years of birth under C.C.P. § 340.4. At the same time, C.C.P. § 340.8 caused no change whatsoever to the limitations period applicable to toxic injuries occuring post-birth, because section 340.8 simply adopted the same two-year limitations period already generally applicable to personal injury

cases under C.C.P. § 335.1. According to the reasoning in *Nguyen* and the dissent in this case, the only limitations period actually affected by the enactment of C.C.P. § 340.8 was the limitations period applicable to prenatal injuries. All this without a word from the Legislature regarding any intent to change the limitations period for prenatal injuries. This cannot be.

Sony submits the majority opinion in this case correctly concluded the six-year limitations period with no tolling provided by C.C.P. 340.4 continues to apply to prenatal toxic injury cases as it has for more than seven decades. C.C.P. § 340.4 is part of a statutory scheme designed to afford a plaintiff the right to bring an action for prenatal injuries, but subject to a six-year limitations period with no tolling during minority. The right to bring an action for prenatal injuries did not exist before the enactment of this statutory scheme. The Legislature first enacted this right with the passage of California Civil Code § 29 in 1872. In enacting section 29, the Legislature did not include a specific limitations period for prenatal injuries.

In 1939, *dicta* in *Scott v. McPheeters* (1939) 33 Cal.App.2d 629 suggested an action for prenatal injuries would be tolled during the age of the child's minority pursuant to C.C.P. § 352. (*See, Scott* at 631 ["Section 376 of the Code of Civil Procedure authorizes a father or a mother to maintain an action for the injury or death of a minor child caused by the wrongful act or neglect of another person. The statute of limitations does not run against such an action until the child arrives at the age of majority. (Sec. 352, subd. 1, Code Civ. Proc.)."].)

In 1941, the Legislature specifically rejected this *dicta* in the *Scott* decision by amending section 29 to include a six-year limitations for prenatal injuries with no tolling during the plaintiff's minority. The right to bring an action for prenatal injuries and the corresponding six-year

limitations period are now codified in Cal. Civil Code § 43.1 and C.C.P. § 340.4, respectively.

Plaintiff's position in this case would revive the rejected *dicta* in the *Scott* decision in direct contravention of the Legislature's expressly-stated intent, by tolling an action for prenatal injuries during the plaintiff's minority. Nothing in the language or legislative history of C.C.P. § 340.8 suggests the Legislature intended such a radical departure from the long-established principles of law codified in Civil Code section 29 and 43.1, and section 340.4.

As clearly reflected in the legislative history of section 340.8, the Legislature simply intended to codify the delayed discovery rule for toxic injury cases. Indeed, as previously mentioned, section 340.8 did not create a new two-year limitations period for toxic injury cases, because toxic injury cases were already subject to a two-year limitations period under C.C.P. § 335.1. In enacting section 340.8, the Legislature intended to disapprove of the use of media reports, in and of themselves, as triggering the limitations period for toxic injury cases. (See, C.C.P. section 340.8(c)(2) ["Media 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.]; *Unruh-Haxton v. Regents of the University of California* (2008) 162 Cal.App.4th 343, 363.)

Nothing in the legislative history reflects an intent to create a new limitations period for toxic injuries generally, or for prenatal injuries specifically. Nor does the express language of section 340.8 indicate any intent to supersede the six-year limitations period applicable to prenatal injuries under C.C.P. § 340.4. It cannot be presumed the Legislature

intended to abrogate the long-standing statutory scheme applicable to prenatal injuries in the absence of the Legislature's express statement of such intent.

The legislative intent behind the two statutes, sections 340.4 and 340.8, can best be harmonized and given effect by applying section 340.4 to prenatal toxic exposure claims, as the delayed discovery rule applies under both. Conversely, applying section 340.8 to such claims, as Plaintiff suggests, would defeat the express legislative intent and nullify the actual language of section 340.4 which precludes tolling under section 352 to prenatal injury claims. Further, because the Legislature did not address the potential conflict between the two sections, the law presumes the Legislature intended section 340.4 to remain in full force and effect. Plaintiff's argument that the Legislature, without a word of discussion or text, impliedly repealed the express provision in section 340.4 carving prenatal claims out from section 352 is untenable. If the Legislature intended to repeal an express provision of section 340.4, it would have done so expressly.

II. FACTUAL BACKGROUND

Plaintiff was born on April 13, 1999. (1 Appellant's Appendix ("A.A.") 30:3-4.) Plaintiff's complaint, filed on January 6, 2012, alleges she was born with numerous birth defects, including fusion of her cervical vertebrae, facial asymmetry, dysplastic nails, diverticulum of the bladder, a misshapen kidney, and developmental delays. (1 A.A. 6:4-9.) Plaintiff's mother worked at a Sony facility in San Diego from 1978 through 2000, including during her pregnancy with Plaintiff. (1 A.A. 3:9-10.)

Plaintiff operative third amended complaint, filed March 15, 2013, alleges claims against Sony for negligence, strict liability, willful misconduct, intentional misrepresentation, negligent misrepresentation,

deceit by concealment and premises liability. (1 A.A. 89-90.) Plaintiff alleged that, during her mother's employment with Sony, she was exposed to chemicals which caused plaintiff's birth defects. (1 A.A.93:18-94:8.)

Sony moved for summary judgment on the ground Plaintiff's action was barred by section 340.4 which imposes a six-year statute of limitations for prenatal injuries, and which also expressly provides there is no tolling of the limitations period under section 352 during the plaintiff's minority. (1 A.A. 128.) In support of its motion, Sony filed evidence showing Plaintiff's mother suspected a connection between her employment at Sony and Plaintiff's condition on or before February 2000.[2]

Plaintiff opposed Sony's motion, arguing her action was subject to section 340.8, not section 340.4. (2 A.A. 396.) Under section 340.8, the two-year limitations period may be tolled under section 352 during a plaintiff's minority. Thus, Plaintiff argued her action was timely because it was filed when she was still a minor. Plaintiff did not offer any evidence to dispute that her mother knew, since at least 2000, of the alleged connection between her workplace exposures at Sony and plaintiff's birth defects.

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[2] On November 11, 1998, Plaintiff's mother told her obstetrician she was concerned for her unborn child due to chemical exposure (1 A.A. 246:17-247:15) and filed a report that same day stating that she suffered "nausea and headaches from smelling Domino compound. (I am 4 months pregnant)." (1 A.A. 249.) Following Plaintiff's birth, a "Neurology Service" report dated February 3, 2000 states her mother suspected Plaintiff's condition was caused by chemical exposure while working for Sony (*Id.*, "Birth History," emphasis added.) On February 9, 2000, Plaintiff's mother filled out a Worker's Compensation form asserting that Plaintiff's condition was caused by prenatal chemical exposure at Sony. (1 A.A. 268.) A medical report dated February 15, 2000 stated the possibility that Plaintiff's condition was caused by her mother's prenatal chemical exposure while working at Sony. (1 A.A. 276.)

The trial court granted Sony's motion by order dated March 14, 2014. (3 A.A. 782-800.) Judgment in favor of Sony was entered thereafter on April 8, 2014. (*Id.* at 801-802.) Plaintiff filed a notice of appeal on June 6, 2014. (*Id.* at 811-815.) On May 13, 2016, a divided panel of the Court of Appeal, Second District affirmed the judgment. (*Lopez v. Sony Electronics, Inc.* (2016) 247 Cal.App.4th 444.)

On June 22, 2016, plaintiff filed a request for review with this Court. On August 24, 2016, this Court granted the petition for review.

III. LEGAL DISCUSSION

A. Standard of Review

On appeal from a summary judgment, the appellate court, like the trial court, strictly construes the moving papers and liberally construes the opposing papers; the moving papers are viewed in the light most favorable to appellant. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717; *Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 181.)

Matters presenting pure questions of law, not involving the resolution of disputed facts, are subject to the appellate court's *de novo* review. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) Application of a statute to undisputed facts presents a question of law subject to independent appellate determination. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.)

B. C.C.P. Section 340.4 Applies To Plaintiff's Claim of Prenatal Injuries, Including Its Express Legislative Decree That Such Claims Are Not Tolled During The Plaintiff's Minority

The right of a child to bring an action for prenatal injuries is a statutorily created right which did not exist at common law. (*Scott, supra,* 33 Cal.App.2d, 629.) This right first came into existence when California

Civil Code section 29 was enacted in 1872.[3] At that time, section 29 did not contain any statute of limitations, and the nature of the cause of action determined which of the many statutes of limitations applied. (*Young v. Haines* (1986) 41 Cal.3d 883, 892.) Dicta in the 1939 *Scott* decision suggested that an action for prenatal injuries under section 29 would be tolled during the child's minority pursuant to C.C.P. section 352. (*Scott, supra*, 33 Cal.App.2d at 631.) In response, the Legislature acted swiftly and clearly to reject this dicta in *Scott* by enacting an amendment to section 29 which expressly excluded prenatal injury claims from section 352 tolling and set forth a six year statute of limitations for prenatal injury actions. (*Olivas v. Weiner* (1954) 127 Cal.App.2d 597, 599; *See also* Hon. Robert W. Kenny, *Analysis of Changes Made in Probate and Civil Codes by 1941 Legislature*, 16 Cal. St. B.J. 276 (1941); Stanley Howell, *The Work of the 1941 California Legislature*, 15 S. Cal. L. Rev. 1 (1941).)[4]

In *Olivas, supra,* 127 Cal.App.2d 597, the Court of Appeal described the Legislature's intent in amending section 29:

> "The Legislature undoubtedly concluded that to permit such an action to be filed up to 22 years 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." (*Olivas,* at 599.)

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[3] The right to maintain an action in tort for prenatal injuries is now codified in Civil Code section 43.1, which states in relevant part: "[a] child conceived, but not yet born, is deemed an existing person, so far as necessary for the child's interests in the event of the child's subsequent birth."

[4] Copies of the Kenny and Howell authorities are found at 2 A.A. 548-554.

The six-year limitations period for prenatal injuries is now codified in C.C.P. § 340.4. Like its predecessor (Civil Code section 29), section 340.4 precludes tolling of the limitations period during the plaintiff's minority. Section 340.4 states:

> "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 352 shall not be excluded in computing the time limited for the commencement of the action."

The Legislature's intent in enacting and amending Civil Code section 29 and C.C.P. § 340.4 is clear and express: section 352 does not apply to prenatal injury claims, and there is no tolling during the age of minority.

C. <u>Plaintiff's Claims Are Not Saved By The Discovery Rule</u>

To address the potential injustice that could occur for injuries sustained before an unborn child could possibly know of the potential causes of such injury, the delayed discovery rule has been consistently applied to section 340.4 and its predecessor, ameliorating the otherwise strict six years from birth limitations on claims for prenatal injuries. (*Dillashaw v. Ayerst Laboratories, Inc.* (1983) 141 Cal.App.3d 35, 38; *Myers v. Stevenson*, (1954), 125 Cal.App.2d 399, 407.)

Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects, or has reason to suspect, "that someone has done something wrong" to him, wrong being used not in any technical sense, but rather in accordance with its "lay understanding." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 & fn. 7.) Under California law, "there is a general, rebuttable presumption that a plaintiff has knowledge of the wrongful causes of an injury." (*Pooshs v. Philip Morris USA, Inc.*

(2011) 51 Cal.4th 788, 795; see also, *Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 638.) Where the plaintiff is a minor, it is the knowledge or lack thereof of the parents which determines when the cause of action accrues. (*Whitfield v. Roth*, (1974) 10 Cal.3d 874, 885; *Myers, supra,* 125 Cal.App.2d at 403.) The plaintiff who invokes the discovery rule bears the burden of proving the doctrine's applicability. (*Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1533.)

Here, whether and how the discovery rule applies is not in dispute. Plaintiff submitted no evidence to dispute any of the undisputed facts set forth in Sony's Separate Statement. Sony's evidence showed that Plaintiff's parents suspected a prenatal injury prior to her birth on April 13, 1999, and certainly suspected as much by February 2000. Pursuant to C.C.P. § 340.4, Plaintiff's claims were statutorily barred no later than February 2006. When this case was filed in 2012, it was barred because the six-year statute of limitations set forth in C.C.P. § 340.4 had expired at least six years earlier.

D. The Statutory Context Of C.C.P. § 340.8 Creates An Ambiguity Regarding Whether The Legislature Intended C.C.P. § 340.4 Or 340.8 To Apply To Prenatal Toxic Injury Cases

Plaintiff contends the trial court and Second Appellate District erred in applying the six-year limitations period of C.C.P. § 340.4 because, according to Plaintiff, the applicable limitations period is set forth in C.C.P. section 340.8. That section deals with exposure to toxic chemicals generally and would allow Plaintiff's claims to be tolled until she reaches the age of majority.

Plaintiff's argument focuses solely on the text of C.C.P. § 340.8. She wrongly argues that C.C.P. § 340.8 applies to prenatal toxic injury cases because of its application to "any civil action for injury or illness

based upon exposure to a hazardous material or toxic substance," and the absence of an express exception for prenatal injuries. Plaintiff's primary argument is that the word "any" found in section 340.8 necessarily includes prenatal injuries and, therefore, section 340.8 supplants section 340.4 as the applicable limitations period for prenatal toxic injury cases.

The flaw in Plaintiff's argument is that it focuses entirely on the text of Section 340.8 while ignoring the statutory scheme as reflected in former Civil Code section 29, Civil Code section 43.1, C.C.P. 340.4 and 335.1. When viewed in the proper statutory context, there clearly exists an ambiguity regarding whether the Legislature intended for prenatal toxic injury cases to be subject to C.C.P. § 340.4 or 340.8.

As noted by the Court of Appeal in this case, "[i]f read separately and in isolation, both section 340.4 and section 340.8 are unambiguous on their face under the plain meaning rule" and "[b]oth may be read to govern plaintiff's action for injuries sustained before her birth and for exposure to toxic substances." (*Lopez v. Sony*, *supra,* 247 Cal.App.4th at 449.) However, courts do not construe statutory provisions in isolation. (*Id.*) Because the text of both statutes apply to prenatal toxic injury cases, the statutory language does not resolve the question of which statute of limitations was intended by the Legislature to apply to such claims. (*Id.* at 450.) Even the *Nguyen* court acknowledged that, "at first glance, both sections 340.4 and 340.8 appear to govern this case." (*Nguyen, supra,* 229 Cal.App.4th 1522, 1549.) The fact that both statutes facially apply to prenatal toxic injury cases necessarily creates an ambiguity regarding which section applies here.

This ambiguity is further compounded by the fact that section 340.8 *did not change the limitations period for toxic injury cases.* Rather, section 340.8 (enacted in 2003) simply reiterates the two-year limitations period

that was <u>already</u> applicable to personal injury actions under C.C.P. § 335.1 (amended in 2002 to expand limitations period for personal injury cases from one year to two years). There is no question the six-year limitations period of section 340.4 applies to prenatal personal injury cases even though section 335.1 provides a two-year limitations period for personal injury cases. If Plaintiff's position in this case is adopted, the necessary implication is that, in enacting section 340.8, the Legislature intended for the limitations period to remain the same as to all toxic injury cases *except* prenatal toxic injury cases, and for the limitations period for prenatal injuries to be more than tripled (from six years to effectively 20 years). Yet, that intent does not appear in the text of section 340.8, even though it is a relatively simple matter for the Legislature to expressly change the limitations period for prenatal injuries or expressly declare such cases subject to tolling under section 352. The ambiguity regarding the Legislature's intent is plain to see once the statutory context of section 340.8 is taken into account.

In construing a statute, the "fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute." (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83; accord, *Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 487; *In re Marriage of Harris* (2004) 34 Cal.4th 210, 221.) In resolving a statutory ambiguity, courts do not limit themselves to a textual analysis. As this Court stated in *Smith, supra,* 39 Cal.4th at 83:

> "'[W]e do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." [Citation.]' " [Citation.] If the statutory terms are ambiguous, we may examine extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we

> choose the construction that comports most closely with the Legislature's apparent intent, endeavoring to promote rather than defeat the statute's general purpose, and avoiding a construction that would lead to absurd consequences. [Citation.]"

Although the starting point in statutory interpretation is to examine the words of the statute, giving them a commonsense meaning (*People v. Nguyen* (2000) 22 Cal.4th 872, 878), the analysis does not end there if the Court concludes "the language is ambiguous or it does not accurately reflect the Legislature's intent." (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1271, *citing People v. Broussard* (1993) 5 Cal.4th 1067, 1071–1072, *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) This Court does not "apply the literal language of a statute 'when to do so would evidently carry the operation of the enactment far beyond the legislative intent and thereby make its provisions apply to transactions never contemplated by the legislative body.' [Citation.]" (*People ex rel. Dept. of Transportation v. Southern Cal. Edison Co.* (2000) 22 Cal.4th 791, 798.)

This Court's recent unanimous decision in *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378 ("*Poole*") illustrates the analysis that should be applied here. At issue in *Poole* was whether the Firefighters Procedural Bill of Rights Act (Gov. Code § 3250 *et seq.*) gives a firefighter the right to review and respond to negative comments in a supervisor's daily log, consisting of notes the supervisor uses as a memory aid but which are not shared with anyone or included in the firefighter's personnel file. (*Poole*, at 1382.) Plaintiffs in *Poole* sought, *inter alia*, injunctive and declaratory relief directing defendants to comply with Gov. Code § 3255, which provides that "[a] firefighter shall not have any comment adverse to his or her interest entered in his or her personnel file, <u>or any other file used for any personnel purposes by his or her employer</u>, without the firefighter

having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment." (*Id.* at 1384, emphasis added.) Plaintiffs in *Poole* claimed the phrase "any other file used for any personnel purposes by his or her employer" is not limited to personnel files and includes a supervisor's daily log and, therefore, the protections of Gov. Code 3255 apply. Importantly, the statutory phrase at issue in *Poole* twice uses the word "any" – the same word present in the text of C.C.P. § 340.8 which Plaintiff claims must be read as encompassing prenatal toxic injury cases.

In *Poole*, this Court agreed with plaintiffs that "the statutory language. . . might, in isolation, be read broadly enough to include [the supervisor's] log, which he used in the performance of his duties as a supervisor." (*Poole* at 1385.) However, this Court did not end its analysis there, because "critical to an understanding of section 3255 is its statutory context." (*Id.*) After noting that neighboring provisions focus on personnel files, this Court concluded that, despite the seemingly broader language of section 3255, "the Legislature was not concerned with any and all files that might in some sense be connected with personnel matters; the Legislature was, rather, specifically concerned with 'personnel files that are used or have been used to determine th[e] firefighters' qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.'" (*Id.* at 1385-86, quoting Gov. Code § 3256.5.) Thus, section 3255, when read in context, "should only be interpreted to encompass any written or computerized record that, although not designated in a personnel file, can be used for the same purposes as a file of the sort described in section 3256.5. . . ." (*Id.* at 1386.) A supervisor's log used solely as a memory aid is not included in that interpretation (*Id.*)

In his concurring opinion, Justice Cuéllar underscored the importance of statutory context in deciding whether a statute's meaning is plain. While Justice Cuéllar recognized the importance of the ordinary usage and dictionary definitions of terms, "[w]hat would be difficult to defend. . . is the proposition that the inquiry should end without considering what the rest of the statute tells us about the meaning of the phrase at issue." (*Poole* at 1391 (Cuéllar, J., concurring).) Moreover, an examination of a statute's context is warranted even when there is no ambiguity on a statute's face because "structure and context can be critical in determining whether ambiguity exists and in discerning the Legislature's intended purpose. [Citations]." (*Id.* at 1393.)

Here, as in *Poole*, the determination of legislative intent behind C.C.P. section 340.8 requires an examination of the entire statutory scheme as reflected in former Civil Code section 29, Civil Code section 43.1, C.C.P. section 340.4, as well as the legislative history of section 340.8. When the entire statutory scheme and legislative history is considered, it is clear the Legislature's intent in enacting section 340.8 was to codify the delayed discovery rule for toxic injury cases, not to create a new limitations period for prenatal injuries.

E. Section 340.8 Was Enacted to Codify the Delayed Discovery Rule for Toxic Injury Cases

As previously stated, section 340.8 did not establish a new two-year limitations period for toxic injury cases. (See, C.C.P. § 335.1 [amended in 2002 to expand limitations period for personal injury cases from one year to two years].) Rather than create a new limitations period, Section 340.8 simply codified the delayed discovery rule for toxic injury cases.

The Senate Judiciary Committee's analysis of S.B. 331, the bill that added section 340.8 to the Code of Civil Procedure, states that the bill

"would codify the doctrine of 'delayed discovery' as it applies to the statute of limitations for filing a lawsuit for illness, injury or death caused by 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; Mot. Requesting Jud. Notice, Ex. 1, p. 1.)[5] The "bill would 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...." (*Id.*) The history notes that then-existing law provided a two-year limitations period for actions arising from injuries "caused by the wrongful act of another" (*id.* at p. 2; Mot. Requesting Jud. Notice, Ex. 1, p. 1.); case law applied the delayed discovery rule to "cases involving injuries from toxic materials" (*id.*); and S.B. 331 "would simply codify the doctrine into statutory form as it relates to cases involving injury or death from exposure to hazardous substances." (*Id.* at p. 6; Mot. Requesting Jud. Notice, Ex. 1, p. 4.)

The following excerpt from Senate Judiciary Committee's analysis shows the legislative intent was to build on the two-year limitations period set forth in C.C.P. § 335.1 and ensure the delayed discovery rule is properly applied to toxic injury cases:

> "Last year, the Legislature extended the statute of limitations, from one year to two years, for suits alleging personal injury or death due to the wrongful act of another (SB 688 (Burton), Chapter 488, Statutes of 2002 [*i.e.,* C.C.P. section 335.1]). Supporters of that bill argued that the one-year statute was one of the shortest limitation periods in the nation for such

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[5] All references to "Mot. Requesting Jud. Notice" refer to Sony's request for judicial notice filed with the Court of Appeal, seeking judicial notice of the legislative committee reports and analyses for Senate Bill No. 331 (2003-2004 Reg. Sess.) found at found at the site https://legalinfo.legislature.ca.gov. The Court of Appeal granted Sony's request for judicial notice.

> cases, and that its brevity encouraged needless litigation by forcing plaintiffs to rush to court to protect their rights, whereas a longer time period would favor settlement of claims prior to litigation.
>
> With this bill, [the sponsor of the bill] seeks to build on SB 688's extended limitations period by codifying the 'delayed discovery' doctrine as it applies to suits for personal injury caused by hazardous substances. [The sponsor] argues that the 'delayed discovery' doctrine is particularly important in these cases since, unlike injuries sustained in accidents or traceable to other obvious causes, illnesses and injuries from exposure to toxic substances can take years to discover and to trace to a negligent act. The difficulty comes in determining exactly when a person 'had reason' to know that his or her injuries were caused by negligence or wrongdoing." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 331 (2003-2004 Reg. Sess.) as amended Apr. 29, 2003, p. 1; Mot. Requesting Jud. Notice, Ex. 1, p. 2.)

Indeed, the Senate Judiciary Committee specifically cited C.C.P. section 335.1 as the "existing law" that would be affected by the proposed legislation. (*Id.*) There is no reference anywhere in the legislative history that the Legislature intended to alter the limitations period applicable to prenatal injuries under C.C.P. section 340.4.

The Assembly Judiciary Committee records are in accord. These records identify the "key issue" as follows: "should the doctrine of delayed discovery be codified as applied to the statute of limitations for actions based on exposure to a hazardous substance?" (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 331(2003-2004 Reg. Sess.) as amended June 26, 2003, p. 1 (hereafter, "Assembly Analysis"); Mot. Requesting Jud. Notice, Ex. 3, p. 1.) In summarizing the proposed legislation, the committee concluded that the bill "[s]eeks to codify the doctrine of delayed discovery as it applies to the statute of limitations for filing a lawsuit for injury caused by exposure to a hazardous substance." (Assembly Analysis at p. 2; Mot.

Requesting Jud. Notice, Ex. 3, p. 1.) Like the Senate Judiciary Committee, the Assembly Judiciary Committee only identified C.C.P. section 335.1 as the existing limitations period that would be affected by the proposed legislation. (*Id.* at p. 3; Mot. Requesting Jud. Notice, Ex. 3, p. 2.)

The legislative intent is found in the chaptered bill, which states that "It is the intent of the Legislature to codify the rulings in *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103 [245 Cal.Rptr. 658, 751 P.2d 923], *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383 [87 Cal.Rptr.2d 453, 981 P.2d 79], and *Clark v. Baxter HealthCare Corp.* (2000) 83 Cal.App.4th 1048 [100 Cal.Rptr.2d 223], in subdivisions (a) and (b) of section 340.8 of the Code of Civil Procedure, as set forth in this measure, and to disapprove the ruling *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151 [86 Cal.Rptr.2d 645], to the extent the ruling in *McKelvey* is inconsistent with paragraph (2) of subdivision (c) of section 340.8 of the Code of Civil Procedure, as set forth in this measure."

Jolly, *Norgart*, and *Clark* applied the common law discovery rule to cases involving exposure to hazardous substances after the plaintiff's birth and did not involve prenatal injuries. Thus, the Legislature expressly stated its intent was to codify the discovery rule in cases involving exposure to hazardous substances.

Courts that have examined section 340.8's legislative history agree that the legislative intent behind the statute's enactment was to codify the delayed discovery rule. (*Rosas v. BASF Corp.* (2015) 236 Cal.App.4th 1378, 1390 [Section 340.8 incorporates the discovery rule into the statute of limitations for toxic torts. . . . The Legislature passed section 340.8 to codify for toxic torts the delayed discovery rule. . . ."]; *Unruh-Haxton, supra,* 162 Cal.App.4th at 363 [section 340.8's "historical notes indicates it was the Legislature's intent to codify the delayed discovery ruling found in

[certain] cases... and to disapprove [a] ruling" applying the delayed discovery rule in the media report context]; *Nelson v. Indevus Pharmaceuticals, Inc.* (2006) 142 Cal.App.4th at 1208-09 [same].)

F. <u>The Lack of Reference To C.C.P. § 340.4 Signifies The Legislature's Intent That Section 340.4 Remain In Full Force and Effect</u>

Neither the text nor the legislative history of section 340.8 mentions section 340.4, or claims arising from prenatal injuries. Nothing in the statute or in its legislative history states that the Legislature intended section 340.8 to have any effect whatsoever on the applicability of section 340.4. Nonetheless, Plaintiff tries to infer such a legislative intention from section 340.8, subdivision (c)(1), which exempts other statutes but not section 340.4. Plaintiff also contends that 340.8 controls because it is the later-enacted statute.

This Court expressly has rejected this type of analysis. In *In re Michael G.* (1988) 44 Cal.3d 283, 287-91, this Court considered whether two later-enacted statutes, Welfare & Institutions Code sections 601 and 207, superseded a pre-existing statute, Welfare & Institutions Code section 213, under which the juvenile court had broad authority to punish a juvenile's disobedience by holding him in contempt and placing him in confinement. Section 207 enumerated three exceptions to its terms, and section 213 was not listed among them. (*Id.* at p. 291, fn. 6.)

This Court rejected the argument that, by not including section 213 in the exceptions to section 207, the Legislature intended, without saying so, to limit a juvenile court's broad authority under section 213. The Court held that the "familiar rule of construction, *expressio unius est exclusio alterius*" - exceptions are specified, others are not to be implied - does not apply "where its operation would contradict a discernible and contrary legislative intent. [Citation.]" (*Id.* at p. 291.) The Court rejected the

position that the exceptions listed in section 207 were sufficient to demonstrate an intent to supersede a juvenile court's authority under section 213, holding that:

> "there is nothing in [the Legislative] history which specifically indicates that the Legislature intended to prohibit a juvenile court from enforcing obedience to a court order through a contempt sanction that does not alter the status of the ward. [Fn. omitted.]" (*Id.* at pp. 294-95.)

As *In re Michael G.* demonstrates, that section 340.8 lists exceptions that do not include section 340.4 does not establish the Legislature intended to supplant section 340.4. Indeed, applying section 340.8 to Plaintiff's claims without any indication the Legislature intended it would lead to absurd results. Under Plaintiff's theory, a prenatal injury resulting from chemical exposure would carry a 20-year limitations period, whereas a prenatal injury resulting from a physical trauma or other cause would have a six-year statute of limitations. At the same, section 340.8 has no effect on the limitations period applicable to toxic injuries occurring post-birth, because those cases were already subject to a two-year limitations period under C.C.P. § 335.1. There is absolutely no evidence the Legislature intended for C.C.P. § 340.8 to carve out a particular subset of pre-birth personal injury cases and dramatically extend the statute of limitations for those cases, while affecting no change whatsoever to the limitations period applicable to post-birth toxic injury cases. (Cf. *In re Greg F.* (2012) 55 Cal.4th 393, 411-12 [holding that a previously existing statute prevailed over a later enacted statute and stating that, "[t]o interpret [the later enacted statute] as cutting off the ... court's broad discretion [under the previously existing statute] ... would ... create an absurd result the Legislature could not have intended"].)

Contrary to Plaintiff's argument, the fact that the Legislature made no express reference to section 340.4 in enacting section 340.8 establishes that 340.4 should control. "When a rule is so long engrained in the public policy of the state it must be presumed that the legislature took it for granted rather than sought to alter it in omitting any specific provision for its application." (*Garvey v. Byram* (1941) 18 Cal.2d 279, 281.) Under the circumstances, failure to address the potential conflict between two statutes gives rise to an inference that the Legislature intended the earlier statute to remain in effect. (*Anson v. County of Merced* (1988) 202 Cal.App.3d 1195, 1202 ["because the Legislature did not address the potential conflict between the two statutes [of limitations], it intended Government Code section 945.6 [the previously existing statute] to remain in full force and effect. [Citation.] Had the Legislature wanted to [supersede the previously existing statute], it would have done so specifically"].) This principle has been applied to defeat an argument that where the legislature expressly preserved other tolling provisions, it impliedly rejected others. (*Williams v. Los Angeles Metropolitan Transit Authority* (1968) 68 Cal.2d 599, 603-604.) It has also been applied where the result barred the claim of a minor. (*Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978.) In *Martell,* the court stated:

> "We note, however, that section 945.6 existed when the Legislature enacted Code of Civil Procedure section 340.5 in 1975, therefore the Legislature is presumed to have known about the six-month filing requirement for complaints against public entities. [citations omitted] Hence, in failing to make an exception in section 340.5 for malpractice claims against public entities, we infer the Legislature intended even minors to be bound by section 945.6's six-month limit." (*Id.* at 983.)

California courts "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. [Citation.]" (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199 [applying previously existing statute where "[t]here is no indication the Legislature enacted [a later statute] in denigration of, or as an exception to [the earlier statute]. . . ."]; *Cmty. Cause v. Boatwright* (1981) 124 Cal.App.3d 888, 903 ["the courts are not to presume that in enacting statutes, the Legislature intends to overthrow established principles of law unless such intention is clear.[.] [I]nstead it will be presumed that the Legislature took such principles for granted rather than sought to alter them by omitting any specific provision for their application. [Citation.]" (italics added)]. Courts "cannot disregard existing laws[,]" and "[t]he Legislature is assumed to have existing laws in mind at the time it enacts a new statute. [Citation.]" (*Roberts v. Cnty. of Los Angeles* (2009) 175 Cal.App.4th 474, 486 ["we expect that the Legislature was aware of the Government Claims Act when it passed MICRA even though it did not address a potential conflict between the two statutes. Thus, it intended Government Code section 945.6 to remain in 'full force and effect' [citation] when it enacted Code of Civil Procedure section 340.5."]; *see also, Barker v. Brown & Williamson Tobacco Corp.* (2001) 88 Cal.App.4th 42, 48 fn. 5 [pre-existing statute of limitations not superseded by later-enacted statute where "the plain language of the [later-enacted] statute does not show an intent to abrogate the [pre-existing] limitations period for tobacco-related injuries"].)

In enacting section 340.8, the Legislature is presumed to have been aware of the long-standing statutory and decisional law surrounding section 340.4 and its predecessor. The Legislature had the opportunity to reference and expressly modify section 340.4, and did not. Thus, the failure to mention section 340.4 does not indicate a legislative intent to abrogate it, rather it reflects an intent to preserve it. The fact that the entire right of

action for prenatal injuries is a creature of statute makes this even more apparent. If the Legislature intended to abrogate section 340.4, it would have done so expressly.

G. The Inclusion of The Word "Any" In C.C.P. § 340.8 Is Not Dispositive Where, As Here, The Legislature Did Not Intend To Abgrogate C.C.P. § 340.4

The inclusion of the word "any" in section 340.8(a) should not be interpreted as enacting an abrogation of section 340.4, especially given the complete absence of any hint in the legislative history of such an intent. As previously discussed, in *Poole, supra,* 61 Cal.4th 1378, this Court rejected a similar argument. In *Poole*, plaintiffs contended the phrase "any other file used for any personnel purposes by his or her employer" found in Gov. Code 3255 applies to files other than personnel files, including supervisor logs. Although plaintiffs' interpretation was supported by a strict textual analysis of Gov. Code 3255, this Court held that the statutory context compelled a more limited interpretation. (*Id.* at 1386.)

As previously stated, section 340.8 merely reiterated the two-year limitations period for personal injury actions set forth in Section 335.1, and codified the delayed discovery rule for toxic exposure cases. For the reasons stated in *Nelson, supra,* 142 Ca.App.4th 1202, and given the statutory context discussed above, the reasonable interpretation of the word "any" in section 340.8 is that the delayed discovery rule set forth therein is applicable to "any" toxic exposure case regardless of the type of toxic substance at issue in the case; i.e., all toxic exposure cases previously subject to C.C.P. § 335.1.

In *Nelson*, the plaintiff claimed personal injuries arising from the use of a prescription diet drug. The drug manufacturer successfully moved for summary judgment based on the contention that the limitations period began to run when dangers of the drug were publicized. (*Nelson*, at 1204.)

The plaintiff argued that actual suspicion is required based in part the delayed discovery rule as set forth in section 340.8. (*Id.*) The drug manufacturer argued that Section 340.8 "applies only to actions concerning environmental hazards, not to personal injury actions such as this one, which are governed solely by section 335.1." (*Id.* at 1209.)

The *Nelson* court rejected the drug manufacturer's attempted distinction between cases involving environmental hazards and those involving injuries arising from prescription drugs. First, the court held that section 340.8 applies to both environmental hazards and prescription drug injuries given that it applies to "any" action based upon exposure to a hazardous material or toxic substance. (*Nelson*, at 1209.) Second, the court noted that the express legislative intent of section 340.8 is that the delayed discovery rule applies to prescription drug cases. (*Id.*) The chaptered bill expressly states that "It is the intent of the Legislature to codify the rulings in [*Jolly, supra,* 44 Cal.3d 1103, *Norgart, supra,* 21 Cal.4th 383, and *Clark, supra,* 83 Cal.App.4th 1048]. . . ." (*Nelson,* at 1209.) As noted by the *Nelson* court: "Both *Jolly* and *Norgart* alleged injuries arising from prescription drugs," and "*Clark* concerned an allergy to latex gloves." (*Id.*)

Thus, section 340.8 applies the delayed discovery rule to toxic exposure cases regardless of the nature of the hazardous material or toxic substance at issue in the case. That is the interpretation supported by the legislative history of the statute. The Legislature's express exclusion, set forth in C.C.P. § 340.8, subd. (c)(1), of asbestos and medical malpractice cases further confirms the Legislature was focused on *causes* of toxic injuries rather creating a new limitations period for prenatal injury plaintiffs. There is no basis in the legislative history to conclude that the Legislature intended to abrogate the statutory scheme applicable to Plaintiffs alleging prenatal injuries as reflected in Civil Code section 43.1

and C.C.P. section 340.4 (and the predecessor Civil Code section 29), especially given the strong legislative intent to exclude tolling during minority for prenatal injuries as reflected in the amendment of Section 29 and subsequent passage of section 340.4.

H. C.C.P. § 340.8(d) Only Confirms That Section 340.8 Does Not Apply To Cases Where The Alleged Cause of Personal Injury Is Something Other Than A Hazardous Material Or Toxic Substance

Plaintiff wrongly argues that C.C.P. § 340.8, subd. (d) demonstrates the Legislature's intent supplant section 340.4 with section 340.8 as to prenatal toxic injury cases. Section 340.8, subd. (d) states: "Nothing 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."

As noted by the Second Appellate District's majority opinion in this case, Plaintiff interprets section 340.8 subd. (d) "to mean the opposite of what it says." (*Nguyen, supra*, 247 Cal.App.4th at 454.) Section 340.8(d) simply confirms the Legislature's intent was for section 340.8 to apply to personal injury claims caused by a hazardous material or toxic substance to the exclusion of other causes of personal injuries. As explained in the majority opinion: "We read subdivision (d) to mean only that section 340.8 does not change any law except that it codifies the delayed discovery rule in personal injury cases based on toxic exposures that were previously governed by the two-year limitations period of section 335.1." (*Id.*) Contrary to C.C.P. 340.2 (asbestos), 340.5 (medical malpractice) and 340.8 (hazardous material or toxic substance), section 340.4 does not apply to a particular *cause* of personal injury. Rather, the Legislature amended Civil Code § 29 and later enacted section 340.4 to ensure that prenatal injury cases are not subject to different causes of action depending on the cause of

the injury. (See, *Young, supra*, 41 Cal.3d at 892 [prior to the amendment of section 29, "[t]he applicable statutes of limitations were set forth in other statutes, depending on the nature of the cause of action."].)

I. Section 340.4 Is More Specific And Therefore Controls

As previously detailed, the predecessor to section 340.4 – C.C.P. § 29 - was enacted in 1872 to abolish the common law rule that an unborn child has no independent existence and therefore no right of action for injuries suffered before its birth. (*Young v. Haines* (1986) 41 Cal.3d 883, 892.) The legislature amended the law in 1941 to respond to a court decision, *Scott, supra,* 33 Cal.App.2d 629, which suggested that an action for prenatal injuries would be tolled during the child's minority. (*Young, supra*, 41 Cal.3d at p. 892.) The legislature amended the statutory scheme that created the right to bring an action for prenatal injury by specifically rejecting the notion that the limitations period could be tolled during the child's minority.

Section 29 was repealed in 1992 and replaced by Civil Code section 43.1 and C.C.P. section 340.4. Civil Code section 43.1 continued the statutory authorization for a right of action for prenatal injuries, and C.C.P. section 340.4 continued the statute of limitations applicable to that right of action. These combined statutes and the history of their amendment reflects a specific statutory scheme to create and limit the time for filing of a cause of action for prenatal injuries.

Conversely, section 340.8 was enacted to address the issue of delayed discovery applicable to claims arising from toxic exposure. It does not set forth a new limitations period for personal injuries arising from toxic exposure, does not address minors, does not address prenatal injuries, is not part of a statutory scheme and did little more than broadly codify the

delayed discovery rule in the context of toxic exposure. Section 340.8 is not part of a broader statutory scheme.

Thus, because section 340.4 is more specific and part of the statutory scheme designed to afford a child the right to bring suit for prenatal injuries within a six-year period (subject to the delayed discovery rule), it must apply to Plaintiff's claims as the Legislature intended.

J. The Two Statutes Can Only Be Reconciled By Giving Effect To 340.4

Whenever possible, statutes must be reconciled to avoid interpretations that would require one statute to be ignored. (*Anson, supra,* 202 Cal.App.3d 1195, 1202.)

Here, applying section 340.8 to Plaintiff's claims, thereby allowing her to toll her claims for the pendency of her minority under section 352, would directly contravene that plain language and legislative intent of section 340.4, where in the Legislature precluded the application of tolling under section 352 to such claims. Conversely, applying section 340.4 to Plaintiff's claims would not contravene the legislature's intent in enacting section 340.8, which was enacted to codify the delayed discovery rule. Because section 340.4 is subject to the delayed discovery rule, its application here would be fully consistent with the legislative intent behind both statutes.

K. *Young v. Haines* Does Not Support Plaintiff's Position

Plaintiff relies on *Young, supra,* 41 Cal. 3d 883, for the proposition that section 340.8 is later enacted and more specific and thus controls. In *Young,* this Court found that, while C.C.P. § 340.4 and 340.5 are both facially applicable to a claim of prenatal injury caused by medical malpractice, section 340.5 applies to such claims rather than section 340.4.

In *Young,* this Court noted that section 340.5 was part of the Medical Injury Compensation Reform Act (MICRA), a comprehensive, interrelated statutory scheme. (*Young*, at 894.) That statute contained express provisions addressing minors, allowing three years from the date of the wrongful act or until the minor's eighth birthday, which is later. (*Id.* at 893.) The statute also included specific tolling provisions applicable to minors. (*Id.*) This Court also observed it was the intent of the Legislature in enacting MICRA to restrict the common law delayed discovery rule, including claims by minors. (*Id.*) As noted in *Young*:

> "In enacting MICRA, the Legislature intended to further restrict the tolling provisions in malpractice actions. The 'long tail' claims, the Legislature noted, had been a contributing cause of the perceived malpractice insurance crisis which precipitated MICRA. [Citations.] The clear legislative purpose was to make available to malpractice plaintiffs only those tolling provisions set forth in the statute." (*Id.* at 896.)

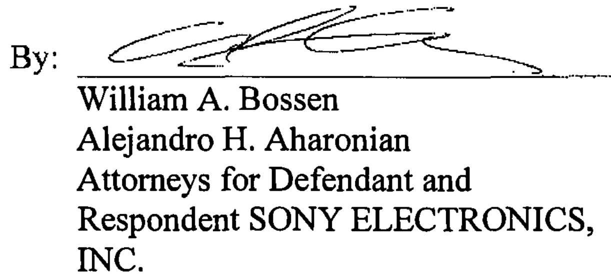
Here, in contrast, section 340.8 is not part of a comprehensive, interrelated statutory scheme. Rather, section 340.8 was enacted merely to codify the delayed discovery rule as to toxic injury claims. On the other hand, section 340.4 is part of an interrelated statutory scheme designed to afford children injured *in utero* the right to bring suit for such injuries, but only within six years of birth (subject to the delayed discovery rule). In amending Civil Code section 29 (the predecessor to Section 340.4) to include a six-year limitations period for prenatal injuries, the Legislature specifically rejected the *dicta* in *Scott, supra*, 33 Cal.App.2d at 631, to the effect that the limitations period for prenatal injuries is determined by the nature of the cause of action and that the limitations period would be tolled during the child's minority. (*Young, supra,* 41 Cal. 3d at 892.) Plaintiff's position in this appeal, if successful, would ensure the *dicta* in *Scott*

becomes a reality in defiance of the Legislature's express intent, and that cannot be allowed.

IV. CONCLUSION

For the reasons stated herein, Respondent Sony respectfully requests the Court affirm the judgment of the trial court and the decision of the Second Appellate District.

DATED: February 21, 2017 MUSICK, PEELER & GARRETT LLP

By: 

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CERTIFICATE OF COUNSEL

I, Alejandro H. Aharonian, hereby certify pursuant to Rule of Court 8.204(c)(1) that this Respondent's Brief was produced on a computer, and that it contains 8,807 words, exclusive of tables, the verification, this Certificate, and the proof of service, but including footnotes, as calculated by the word count of the computer program used to prepare this brief.

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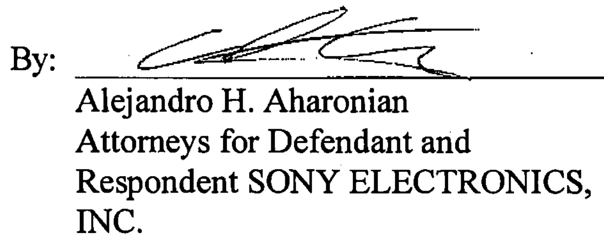
By: 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is One Wilshire Boulevard, Suite 2000, Los Angeles, California 90017-3383.

On February 21, 2017, I served true copies of the following document(s) described as **RESPONDENT'S ANSWER BRIEF ON THE MERITS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Musick, Peeler & Garrett LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on February 21, 2017, at Los Angeles, California.

Claire C. De Los Reyes

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