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SUPREME COURT
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**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 OPENING BRIEF ON THE MERITS

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ISSUE FOR REVIEW

Is an action for injuries based on prebirth (*in utero*) exposure to toxic chemicals governed by the statute of limitations in Code of Civil Procedure section 340.8,¹ which applies to “any civil action for injury or illness based upon exposure to a hazardous material or toxic substance,” (Code Civ. Proc., § 340.8, subd. (a)), or the statute of limitations in section 340.4, which applies to “[a]n action by or on behalf of a minor for personal injuries sustained before or in the course of his or her birth”? (*Id.*, § 340.4.)

INTRODUCTION

This action arises out of severe birth defects and injuries suffered by Plaintiff, Appellant, and Petitioner Dominique Lopez (Dominique) from prebirth (*in utero*) exposure to toxic chemicals at an electronics manufacturing facility operated by Defendant and Respondent Sony Electronics, Inc. (Defendant Sony or Sony), where Dominique’s mother worked while she was pregnant with her. Sony moved for summary judgment on the ground that this action was barred by the statute of limitations in section 340.4, which provides a six-year limitations period for “[a]n action by or on behalf of a minor for personal injuries sustained before or in the course of his or her birth,” and which does not permit tolling for minority under section 352. (Code Civ. Proc., § 340.4.) In

¹ Unless stated otherwise, all undesignated statutory references are to the Code of Civil Procedure.

opposition, Dominique argued that the applicable statute of limitations was section 340.8, which provides a two-year limitations period for “any civil action for injury or illness based upon exposure to a hazardous material or toxic substance.” (*Id.*, § 340.8, subd. (a).) Dominique argued that this action was timely filed under section 340.8 because, unlike section 340.4, the limitations period in section 340.8 is subject to minority tolling under section 352 and she was a minor when her claim accrued and when this action was filed. Agreeing with Sony that Dominique’s claim was subject to and barred by the limitations period in section 340.4, the trial court granted Sony’s motion for summary judgment.

On appeal, the judgment was affirmed by a divided panel of the Second District Court of Appeal. The majority held that the applicable statute of limitations was section 340.4 and that Dominique’s claim was time-barred under it. (Typed maj. opn. at pp. 2, 4-13.) In so holding, the majority disagreed with *Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522 (*Nguyen*), in which the Sixth District Court of Appeal, considering the same limitations issue, unanimously held that “claims based on birth or pre-birth injuries that are due to exposure to hazardous materials or toxic substances are subject to the limitations period in section 340.8,” not section 340.4.² (*Id.* at pp. 1528, 1539-1540, 1543-1551; see typed maj.

² *Nguyen* was decided on September 25, 2014, approximately six months after the trial court’s summary judgment ruling in this case. On

opn. at p. 2 [disagreeing with *Nguyen*].)

The dissent disagreed. Finding the statutory analysis and holding in *Nguyen* to be correct, the dissent concluded that Dominique's claim was subject to and timely filed in accordance with the limitations period in section 340.8. (Typed dis. opn. at pp. 1-2, 4-13.)

The majority's decision was erroneous because, as both the dissent and court in *Nguyen* correctly concluded, under the plain meaning of its clear language, the statute of limitations applicable to an action for prebirth injuries based on exposure to a hazardous material or toxic substance is section 340.8, not section 340.4. As discussed below, section 340.8 is a later, more specific statute that was enacted to establish a separate statute of limitations applicable to *all* civil actions for injury based on exposure to a hazardous material or toxic substance, *regardless of age*. The only exceptions are actions for injuries based on exposure to asbestos or the professional negligence of a health care provider, neither of which is applicable here.

Accordingly, the judgment of the Court of Appeal should be reversed, as should the judgment entered in favor of Defendant Sony, because this action was timely filed under section 340.8.

December 17, 2014, this Court denied the petition for review filed by the defendant in *Nguyen* (S222377).

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND.

Dominique was born on April 13, 1999. (1 Appellant's Appendix (AA) 154 [fact no. 7], 176 [¶ 1], 178 [¶ 21]; 3 AA 636 [fact no. 7]; see also 1 AA 136:10-12; typed maj. opn. at p. 2.) Her mother, Cheryl Lopez, worked for Defendant Sony at a Sony electronics manufacturing facility in San Diego, California, from 1978 to 2000, including while she was pregnant with Dominique. (1 AA 153-154 [fact nos. 4, 6], 177-178 [¶¶ 15, 17-19, 21]; 3 AA 635 [fact nos. 4, 6]; see also 1 AA 136:5-10; typed maj. opn. at p. 2.) During the pregnancy, Cheryl was allegedly exposed to teratogenic³ and reproductively toxic chemicals at the Sony manufacturing facility, resulting in Dominique's exposure to the same toxic chemicals *in utero*.⁴ (1 AA 154 [fact no. 6], 177-180 [¶¶ 17-19, 21, 28-30]; 3 AA 635

³ "Teratogenic" means 'tending to cause developmental malformations' (*Nguyen, supra*, 229 Cal.App.4th at p. 1529, fn. 3; see *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App. 4th 1549, 1556 ["A teratogen is a chemical that can cause birth defects."].)

⁴ The teratogenic and reproductively toxic chemicals to which Dominique was allegedly exposed include:

- a. Ethylene glycol ethers and their acetates, propylene glycol monomethyl ether (PGME), propylene glycol monoethyl ether acetate (PGMEA), ethylene glycol, 2-butoxyethano;
- b. Toluene;
- c. Chlorinated polyvinyl chloride resin;

[fact no. 6]; see also 1 AA 136:7-10; typed maj. opn. at pp. 2-3.) As a result of these exposures, Dominique alleges that she suffered severe birth defects and injuries, including chromosomal deletion, fusion of cervical vertebrae, facial asymmetry, dysplastic nails, diverticulum of the bladder, a misshapen kidney, and developmental delays. (1 AA 154-155 [fact no. 8], 180-181 [¶¶ 32-33]; 3 AA 636 [fact no. 8]; see also 1 AA 136:10-12; typed maj. opn. at pp. 2-3.)

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- d. Bisphenol A fumarate resin;
 - e. Cyclohexanone;
 - f. Molybdenum disulfide;
 - g. Zinc pyrophosphate and zinc compounds;
 - h. Isopropanol (IPA), isopropyl alcohol and acetone; and
 - i. Methyl ethyl ketone (MEK), methyl alcohol and methyl isobutyl ketone;
 - j. Xylene;
 - k. 2-ethylhexoanic acid;
 - l. Ethoxylated alcohol;
 - m. Tetrapotassium pyrophosphate;
 - n. Lead; and
 - o. Petroleum distillates, including white spirits, lacquer petrol, mineral spirits, solvent naphtha and Stoddard solvent.

(1 AA 154 [fact no. 6], 177-180 [¶¶ 17-19, 21, 28-30]; 3 AA 635 [fact no. 6]; see also 1 AA 136:7-10.)

II. PROCEDURAL SUMMARY.

A. Proceedings In The Trial Court.

The original complaint in this action was filed on January 6, 2012, when Dominique was 12 years of age. (1 AA 1, 153-154 [fact nos. 1, 7], 176 [¶ 1], 178 [¶ 21]; 3 AA 634 [fact no. 1], 636 [fact no. 7]; see also 1 AA 135:27 - 136:1, 136:10-12; typed maj. opn. at p. 2.) On June 6, 2012, an amendment naming Defendant Sony in place of fictitious defendant Doe 1 was filed. (1 AA 28.) The operative third amended complaint was filed on March 15, 2013, (*id.* at p. 89), alleging claims against Sony for negligence, strict liability, willful misconduct, intentional misrepresentation, negligent misrepresentation, deceit by concealment, and premises liability. (*Id.* at pp. 102-122.)

On or about July 12, 2013, Defendant Sony filed a motion for summary judgment on the ground that Dominique's "claim [wa]s barred by the statute of limitations set forth in California Code of Civil Procedure section 340.4." (1 AA 128-129.) Sony argued that Dominique's claim accrued no later than the year 2000, when her mother suspected that Dominique's birth defects had been caused by *in utero* toxic exposures at the Sony manufacturing facility where she worked, and that this action was barred by the six-year limitations period in section 340.4 because it was filed on January 6, 2012, more than six years after the accrual of Dominique's claim. (*Id.* at pp. 133-144; typed maj. opn. at p. 3.)

Anticipating Dominique's argument that the applicable statute of limitations is section 340.8, Defendant Sony argued that section 340.8 was inapplicable because section 340.4 is more specific and applies specifically to claims for prebirth injuries. (1 AA 144-148.) Additionally, Sony argued that it would contravene the intent of the Legislature to apply section 340.8, rather than section 340.4, because the limitations period in section 340.8 is subject to tolling for minority under section 352, whereas the limitations period in section 340.4 is not. (*Id.* at pp. 146-148.)

In her opposition to Defendant Sony's motion, Dominique argued that the applicable statute of limitations was section 340.8, not section 340.4, because section 340.8 was a later-enacted, more specific statute that was intended by the Legislature to apply to all actions for injury based on exposure to a hazardous material or toxic substance, except actions arising out of exposure to asbestos or involving medical malpractice. (2 AA 400-410.) Dominique argued that even if her claim accrued on the day she was born (April 13, 1999), the earliest possible time of accrual, it was not time-barred under the six-year limitations period in section 340.4 when section 340.8 became operative on January 1, 2004. (*Id.* at pp. 402-403, 409.) As such, she argued that her claim became subject to section 340.8 at that time (January 1, 2004), and that because the limitations period in section 340.8 allows tolling for minority and/or mental incapacity under section 352, this action was timely filed under section 340.8 because she was both a minor

and mentally incapacitated when the original complaint was filed. (*Id.* at pp. 409-411.)

In its reply, Defendant Sony again argued that the applicable statute of limitations was section 340.4, and that this action was time-barred under section 340.4 because it was filed more than six years after the accrual of Dominique's claim. (2 AA 487-497.)

Defendant Sony's motion for summary judgment was noticed for hearing on September 27, 2013, but the hearing was continued to October 23, 2013. (1 AA 128-129; 2 AA 393.) The parties appeared for the hearing on that date, but it was again continued, this time to March 14, 2014. (2 AA 558.)

Based on this lengthy continuance, Dominique filed an updated opposition on February 28, 2014, in which she argued that her claim was subject to the limitations period in section 340.8, rather than section 340.4, based on the plain meaning of section 340.8's clear language and because it was a later-enacted, more specific statute. (3 AA 569, 571-585.) In addition, she argued that although it was unnecessary to consult the legislative history of section 340.8, because the statute is clear and unambiguous, that history, if considered, supported her position because it showed that section 340.8 was enacted to establish a separate statute of limitations for all civil actions for injury based on exposure to hazardous material or toxic substance, except actions arising out of exposure to

asbestos or involving medical malpractice. (*Id.* at pp. 582-585; see also *id.* at pp. 569, 571-575.) Accordingly, because her claim was not time-barred under section 340.4 when section 340.8 became operative, Dominique argued that her claim became subject to section 340.8 at that time, and that this action was timely filed under section 340.8 based on tolling for minority and mental incapacity under section 352. (*Id.* at pp. 575-576, 586-587.)

Defendant Sony filed an updated reply, in which it argued, as before, that section 340.4 was the applicable statute of limitations, and that this action was time-barred under section 340.4 because it was filed more than six years after the accrual of Dominique's claim. (3 AA 701-711.)

Defendant Sony's motion for summary judgment was heard, argued, and taken under submission on March 14, 2014. (3 AA 781; Reporter's Transcript of Proceedings, Mar. 14, 2014, pp. 4-22.) Later that day, the trial court issued an order granting the motion. (3 AA 782-800.) The trial court ruled that the applicable statute of limitations was section 340.4, not section 340.8, because section 340.4 "is the more specific statute," (*id.* at pp. 782, 794-798), and that this action was barred by section 340.4 because Dominique's claim accrued no later than the year 2000 and this action was filed more than six years later. (*Id.* at pp. 782, 788-794; typed maj. opn. at p. 4.)

Judgment was entered in favor of Defendant Sony on April 8, 2014.

(3 AA 801-802; typed maj. opn. at p. 4.) Notice of entry of judgment was served on April 11, 2014. (3 AA 803-810.) Dominique filed a timely notice of appeal from the judgment on June 6, 2014. (*Id.* at pp. 811-815; Cal. Rules of Court, rule 8.104(a)(1)(B).)

B. The Court Of Appeal's Decision.

In a published opinion filed on May 13, 2016, a divided panel of Second District Court of Appeal affirmed the judgment in favor of Defendant Sony. The majority (Justice Grimes joined by Presiding Justice Bigelow) held that Dominique's claim was governed and barred by the statute of limitations in section 340.4. (Typed maj. opn. at pp. 2, 4-13.) In so holding, the majority disagreed with the decision in *Nguyen, supra*, 229 Cal.App.4th 1522, where the Sixth District Court of Appeal, considering the same limitations issue, unanimously held that "claims based on birth or pre-birth injuries that are due to exposure to hazardous materials or toxic substances are subject to the limitations period in section 340.8," not section 340.4. (*Id.* at pp. 1528, 1539-1540, 1543-1551; see typed maj. opn. at p. 2 [disagreeing with *Nguyen*].)

The dissent (Justice Rubin) disagreed. Agreeing with the analysis and holding in "*Nguyen* that the plain language of section 340.8 shows that it supersedes section 340.4 where an action for prenatal or birth injuries is based on exposure to toxic or hazardous substances," (typed dis. opn. at p. 7), the dissent would have reversed the judgment because Dominique's

claim was timely filed under section 340.8. (*Id.* at pp. 1-2, 4-13.)

LEGAL DISCUSSION

I. STANDARD OF REVIEW.

Summary judgment is properly granted only “if all the papers submitted show there is no triable issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c); *Martinez v. Combs* (2010) 49 Cal.4th 35, 68.) When moving for summary judgment, a defendant has the “burden of showing . . . that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2); accord, *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850.) Only if the defendant has satisfied its initial burden does the burden shift to the plaintiff to show the existence of a triable issue of material fact. If the defendant does not satisfy its burden, the burden does not shift and summary judgment should be denied. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at pp. 849-850.)

“In reviewing an order granting summary judgment, [the appellate court] must assume the role of the trial court and redetermine the merits of the motion.” (*S.M. v. Los Angeles Unified Sch. Dist.* (2010) 184 Cal.App. 4th 712, 716; accord, *Palm Springs Villas II Ass’n, Inc. v. Parth* (2016) 248 Cal.App.4th 268, 278.)

“The determination of the statute of limitations applicable to a

cause of action is a question of law [that an appellate court] review[s] independently.” (Stockton Citizens for Sensible Planning v. City of Stockton (2012) 210 Cal.App.4th 1484, 1491, quoting McLeod v. Vista Unified Sch. Dist. (2008) 158 Cal.App.4th 1156, 1164.)

II. THE POTENTIALLY APPLICABLE STATUTES OF LIMITATIONS.

A. Section 340.4: The General Statute Of Limitations For Actions Based On Prebirth Or Birth Injuries.

Section 340.4 provides that “[a]n 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.”⁵

Section 340.4 was enacted in 1992 and became operative on January 1, 1994. (Stats. 1992, ch. 163, §§ 16, 161, pp. 731, 842; *Nguyen, supra*, 229 Cal.App.4th at pp. 1539, 1545.) It “continues the last part of former Civil Code Section 29 without substantive change.” (22 Cal. Law Revision Com. Rep. (1992) p. 750, reprinted in West’s Ann. Code Civ. Proc. foll. § 340.4; accord, *Nguyen*, at pp. 1539, 1545.) Former Civil Code section 29

⁵ Section 352 states in pertinent part that “[i]f a person entitled to bring an action . . . is at the time the cause of action accrued either under the age of majority or insane, the time of the disability is not part of the time limited for commencement of the action.” (Code Civ. Proc., § 352, subd. (a).)

was originally enacted in 1872 and was amended in 1941 to include a six-year limitations period and “to state expressly that section 352 tolling did not apply to actions brought under that statute.” (*Young v. Haines* (1986) 41 Cal.3d 883, 889, 892; accord, *Nguyen*, at p. 1545.)

Section 340.4 has been judicially construed to incorporate the discovery rule, under which a cause of action does not accrue, nor does the statute of limitations begin to run, until the plaintiff discovers, or should have discovered, the negligent or wrongful cause of his or her injury. (*Young, supra*, 41 Cal.3d at pp. 890, 892-893 [construing former Civ. Code, § 29]; *Nguyen, supra*, 229 Cal.App.4th at pp. 1539, 1545.) “Where the plaintiff is a minor, it is the knowledge or lack thereof of the parents which determines when the cause of action accrues.” (*Young*, at p. 890, fn. 4.)

B. Section 340.8: The Statute Of Limitations For Injury Actions Based On Exposure To A Hazardous Material Or Toxic Substance.

Section 340.8 sets forth the limitations period for “any civil action for injury or illness based upon exposure to a hazardous material or toxic substance.” (Code Civ. Proc., § 340.8, subd. (a).) It provides that “the time for commencement of the action shall be no later than either two years from the date of injury, or two years after the plaintiff becomes aware of, or reasonably should have become aware of, (1) an injury, (2) the physical cause of the injury, and (3) sufficient facts to put a reasonable person on inquiry notice that the injury was caused or contributed to by the wrongful

act of another, whichever occurs later.” (*Ibid.*) Unlike section 340.4, the limitations period in section 340.8 is subject to tolling for minority and/or mental incapacity under section 352. (*Id.*, §§ 340.8, 352, subd. (a); see *Nguyen, supra*, 229 Cal.App.4th at pp. 1540-1541 [“we conclude that the tolling provision in section 352 for minority and insanity applies to section 340.8”].)

Pursuant to its express language, only two types of actions are excluded from the limitations period in section 340.8: (1) actions “subject to Section 340.2,” the statute of limitations for asbestos-related injury claims; and (2) actions “subject to Section . . . 340.5,” the statute of limitations for injury claims based on the professional negligence of a health care provider. (Code Civ. Proc., § 340.8, subd. (c)(1);⁶ *Nguyen, supra*, 229 Cal.App.4th at pp. 1540, 1546.) In addition, the statute provides that “[m]edia reports regarding the hazardous material or toxic substance contamination do not, in and of themselves, constitute sufficient facts to put a reasonable person on inquiry notice that the injury or death was caused or contributed to by the wrongful act of another.” (Code Civ. Proc., § 340.8, subd. (c)(2).)

Further, the language of section 340.8 shows that it was intended to

⁶ Section 340.8, subdivision (c)(1), states: “For purposes of this section . . . [¶] A ‘civil action for injury or illness based upon exposure to a hazardous material or toxic substance’ does not include an action subject to Section 340.2 or 340.5.”

change existing law as to the limitations period for injury actions based on exposure to a hazardous material or toxic substance, but not other types of actions. In this regard, the statute 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.” (Code Civ. Proc., § 340.8, subd. (d); see *Nguyen, supra*, 229 Cal.App.4th at p. 1548 [“This language [in section 340.8, subdivision (d),] supports the conclusion that section 340.8 was intended to change existing law regarding the limitations periods for actions ‘based upon exposure to a hazardous material or toxic substance,’ but not other types of actions.”]; accord, typed dis. opn. at p. 8.)

Section 340.8 was enacted in 2003 and became operative on January 1, 2004. (Stats. 2003, ch. 873, § 1, p. 6398; Cal. Const., art. IV, § 8, subd. (c)(2); *Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 637, fn. 8; *Nguyen, supra*, 229 Cal.App.4th at p. 1540.)

III. SECTION 340.8 IS THE APPLICABLE STATUTE OF LIMITATIONS BASED ON THE PLAIN MEANING OF ITS CLEAR LANGUAGE.

Based on its clear and unambiguous language, the statute of limitations applicable to a claim for prebirth injuries based on exposure to a hazardous material or toxic substance is section 340.8, not section 340.4. This was the determination of the Court of Appeal in *Nguyen*, after a careful analysis of the two statutes. (*Nguyen, supra*, 229 Cal.App.4th at

pp. 1528, 1539-1540, 1543-1551.) It was also the conclusion of the dissent in the Court of Appeal in this case. (Typed dis. opn. at pp. 1-2, 4-13.) It was not, however, the conclusion reached by the majority, which held that section 340.4 is the applicable statute of limitations. That determination was erroneous and should be reversed.

A. The Rules Of Statutory Construction.

The “well-established rules of statutory construction” provide that, in construing a statute, the court “must ascertain the intent of the drafters so as to effectuate the purpose of the law.” (*Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268.)

Because the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context. [Citation.] When statutory language is clear and unambiguous, “there is no need for construction and courts should not indulge in it. [Citation].”

(*Ibid*; accord, *Klein v. United States* (2010) 50 Cal.4th 68, 77; *Hassan v. Mercy Am. River Hosp.* (2003) 31 Cal.4th 709, 715 [“The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.”].) “If no ambiguity appears in the statutory language, we presume that the Legislature meant what it said, and the plain meaning of the statute controls.” (*People v. Gray* (2014) 58 Cal. 4th 901, 906, quoting *People v. Stanley* (2012) 54 Cal.4th 734, 737; see *Hartford Fire Ins. Co. v. Macri* (1992) 4 Cal.4th 318, 326 [“Where the

statute is clear, courts will not ‘interpret away clear language in favor of an ambiguity that does not exist.’”]; *Brandon S. v. State ex rel. Foster Family Home & Small Family Home Ins. Fund* (2009) 174 Cal.App.4th 815, 825 (*Brandon S.*) [“When the statutory language is clear, it governs.”].)

“[R]esort to a statute’s legislative history is appropriate only if the statute is reasonably subject to more than one interpretation or is otherwise ambiguous.” (*Ste. Marie v. Riverside County Reg’l Park and Open-Space District* (2009) 46 Cal.4th 282, 290; accord, *People v. Farrell* (2002) 28 Cal.4th 381, 394; see *Esberg, supra*, 28 Cal.4th at p. 269 [if the language of a statute “is unambiguous, we need not consider various extrinsic aids, such as the purpose of the statute, the evils to be remedied, the legislative history, public policy, or the statutory scheme encompassing the statute”]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 29 [“resort to legislative history is appropriate only where statutory language is ambiguous”].) “Although legislative history often can help interpret an ambiguous statute, it cannot change the plain meaning of clear language.” (*In re Steele* (2004) 32 Cal.4th 682, 694; see *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992 [“A court may not, ‘under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used.’”]; *People v. Dunbar* (2012) 209 Cal.App.4th 114, 117 [courts will not “countenance efforts to *create* an ambiguity by reference to extrinsic

evidence; outside sources simply do not come into play when the language of a statute is clear and unambiguous”]; *In re Marriage of Hokanson* (1998) 68 Cal.App.4th 987, 993 [legislative history cannot be used to rewrite a statute “[w]hen the language of the statute is clear and unambiguous”].)

Applying the above rules, as the court in *Nguyen* and the dissent in the Court of Appeal in this case did, the statute of limitations applicable to a claim for prebirth injuries based on exposure to a hazardous material or toxic substance is section 340.8, not section 340.4.

B. The Clear Language Of Section 340.8 Establishes That It Is The Applicable Statute Of Limitations.

According to its clear language, section 340.8 applies to “*any* civil action for injury or illness based upon exposure to a hazardous material or toxic substance.” (Code Civ. Proc., § 340.8, subd. (a), italics added; see *Nelson v. Indevus Pharms., Inc.* (2006) 142 Cal.App.4th 1202, 1209 [“When we look to the clear language of the statute [citation] we see that it applies to ‘any’ civil action ‘for injury or illness based upon exposure to a hazardous material or toxic substance.’ Nothing in the statute limits its provisions to environmental hazards, or provides that they do not apply to cases alleging injury from prescription drugs, and we cannot import such a provision into the law.”].)

“The word ‘any’ is not ambiguous.” (*Brandon S., supra*, 174 Cal. App.4th at p. 825; accord, *People v. Dunbar, supra*, 209 Cal.App.4th at