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NEWS RELEASE

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Summary of Cases Accepted During the Week of February 6, 2006

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#06-14 *People v. Pitto, S139609.* (A105164; 133 Cal.App.4th 1544; Lake County Superior Court; CR033635.) Review on the court's own motion after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issues: (1) Did CALJIC No.17.15, as given by the trial court here, adequately apprise the jury of the need for a "facilitative nexus" between the handgun and the underlying crime, as those terms are utilized in *People v. Bland* (1995) 10 Cal.4th 991? (2) If not, did the trial court have a sua sponte duty to modify the instruction given? (3) Was any instructional omission prejudicial?

#06-15 *Professional Engineers in California Government v. Morales, S139917.* (A108641; 134 Cal.App.4th 15; San Francisco County Superior Court; CPF-02-502067.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in an action for administrative mandate. This case presents the following issue: Did Proposition 35 (General Elec. (Nov. 7, 2000)) repeal by implication statutes limiting the state's authority to use private contractors to perform architectural and engineering services on public works projects and thus allow state agencies to choose to contract out such services, or did the initiative merely accord the Legislature the as-yet unexercised power to authorize private contracting in this area?

#06-16 *People v. Semaan, S139685.* (E035671; 133 Cal.App.4th 1445; Riverside County Superior Court; RIF106168.) Petition for review after the Court of Appeal affirmed one order denying a claim to funds held for restitution in a criminal action and reversed another. This case includes the
(over)

following issue: Where a third party claimant to funds protected under Penal Code section 186.11, subdivision (e), shows title to the account in which the funds are held, does the burden shift to the People to show that the claimant does not have a legitimate interest in the funds?

#06-17 *Hartford Fire Ins. Co. v. Superior Court*, S140272. (A109257; 134 Cal.App.4th 649, mod. 134 Cal.App.4th 173a; San Francisco County Superior Court; 323192.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court ordered briefing deferred pending decision in *Californians for Disability Rights v. Mervyn's*, S131798 (#05-93), and *Branick v. Downey Savings & Loan Assn.*, S132433 (#05-94), which present the following issues: (1) Do the provisions of Proposition 64 (Gen. Elec. (Nov. 2, 2004)) that limit standing to bring an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) to “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” (Bus. & Prof. Code, § 17204, as amended) apply to actions pending when the provisions of the proposition became effective on November 3, 2004? (2) If the standing limitations of Proposition 64 apply to actions under the Unfair Competition Law that were pending on November 3, 2004, may a plaintiff amend his or her complaint to substitute in or add a party that satisfies the standing requirements of Business and Professions Code section 17204, as amended, and does such an amended complaint relate back to the initial complaint for statute of limitations purposes?

#06-18 *People v. Torres*, S139595. (C048309; 133 Cal.App.4th 1359; Yolo County Superior Court; 8910978.) Petition for review after the Court of Appeal dismissed an appeal from an order of commitment as a sexually violent predator. The court ordered briefing deferred pending decision in *Conservatorship of Ben C.*, S126664 (#04-97), which presents the following issue: Is the Court of Appeal required to conduct an independent review of the record in an appeal from a conservatorship order if appointed counsel for the conservatee files a brief stating that counsel has found no reasonably meritorious issues? (See *Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436; *In re Sade C.* (1996) 13 Cal.4th 952.)

STATUS

#04-119 *Soukup v. Law Offices of Herbert Hafif*, S126715. The court ordered review in *Soukup v. Law Offices of Herbert Hafif*, B152759/B154311, severed from *Hutton v. Law Offices of Herbert Hafif*, B154184.

#06-19 *Hutton v. Law Offices of Herbert Hafif*, S140997. In this case, in which review was previously granted and then refiled upon severance from *Soukup v. Law Offices of Herbert Hafif*, S126715 (#04-119), the court ordered briefing deferred pending decision in *Flatley v. Mauro*, S128429 (#04-146), which presents the following issue: When a plaintiff files a cause of action based upon illegal conduct (e.g., extortion) allegedly engaged in by the defendant in relation to prior litigation, is the plaintiff’s action subject to a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16)?