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NEWS RELEASE

Release Number: **S.C. 15/07**

Release Date: **April 12, 2007**

Summary of Cases Accepted During the Week of April 9, 2007

[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.]

#07-133 *California Farm Bureau Federation v. California State Water Resources Control Bd.*, S150518. (C050289; 146 Cal.App.4th 1126; Sacramento County Superior Court; 03CS01776, 04CS00473.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Does Water Code section 1525, which was amended by the Legislature by majority vote in 2003 to impose annual fees on the persons and entities holding permits and licenses issued by the State Water Resources Control Board, impose an invalid tax or a lawful regulatory fee? (2) If section 1525 is valid, may the Water Resources Control Board permissibly collect a fee levied on an entity which has sovereign immunity from a person or entity who has a contract with the immune sovereign? (3) If the statutory scheme is valid, but the regulations implementing it are invalid, did the Court of Appeal err in limiting refunds to only those persons and entities filing petitions for reconsideration before the Water Resources Control Board?

#07-134 *People v. Banchon*, S149634. (B186899; nonpublished opinion; Los Angeles County Superior Court; BA265029.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Palacios*, S132144 (#05-104), which presents the following issue: Does the multiple punishment bar of Penal Code section 654 apply to sentence enhancements generally and, in

(over)

particular, to the enhancement under Penal Code section 12022.53, subdivision (d), for the personal and intentional discharge of a firearm resulting in death or great bodily injury?

#07-135 *People v. Costello*, S150173. (E037674; 146 Cal.App.4th 973; San Bernardino County Superior Court; FBA 06285.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending finality of the decision in *People v. Giles* (2007) 40 Cal.4th 833, which concerns the doctrine of forfeiture by wrongdoing.

#07-136 *Firchow v. Citibank (South Dakota), N.A.*, S150386. (B187081; nonpublished opinion; Los Angeles County Superior Court; BC287691.) Petition for review after the Court of Appeal reversed an order denying a motion to compel arbitration. The court ordered briefing deferred pending decision in *Gentry v. Superior Court*, S141502 (#06-46), which presents issues regarding the enforceability of an arbitration provision that prohibits employee class actions in litigation concerning alleged violations of California's wage and hour laws.

In the following cases, which present issues relating to the effect of *Cunningham v. California* (2007) 549 U.S. ___, 127 S.Ct. 856, on California sentencing law, the court ordered briefing deferred pending further order of the court:

#07-137 *People v. Anthony*, S150599. (F048576; nonpublished opinion; Kern County Superior Court; BF109124A.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-138 *People v. Berry*, S149842. (F048189, F048190; 146 Cal.App.4th 20; Merced County Superior Court; 25359, 25360.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#07-139 *People v. Carmona*, S149580. (B183388; nonpublished opinion; Los Angeles County Superior Court; TA075585.) Petition for review after the Court of Appeal reversed in part and affirmed in part a judgment of conviction of criminal offenses.

#07-140 *People v. Cole*, S149631. (C049298; nonpublished opinion; Sacramento County Superior Court; 04F01186.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-141 *People v. Fonseca*, S150771. (B188308; nonpublished opinion; Los Angeles County Superior Court; BA271919.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-142 *People v. Garcia*, S150110. (C049205; nonpublished opinion; Sacramento County Superior Court; 03F10094.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

#07-143 *People v. Townshend*, S149967; nonpublished opinion; Los Angeles County Superior Court; BA250166.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

#07-144 *People v. Zaragoza*, S150531. (E039301; nonpublished opinion; Riverside County Superior Court; SWF005784.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

DISPOSITION

The following case was transferred for reconsideration in light of *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235:

#05-98 *Benson v Kwikset Corp.*, S132443.

STATUS

#05-222 *Adoption of Joshua S.*, S138169. The court requested the parties to file supplemental briefs addressing the following issues: (1) Does Code of Civil Procedure section 1021.5 authorize an award of attorney fees against a litigant who has done nothing to adversely affect the rights of the public or a substantial class of people other than raising an issue in the course of litigation over private rights and interests that results in an important appellate precedent adverse to that litigant? Would case law and legislative history support such an award? (2) What significance if any to a party's eligibility for section 1021.5 attorney fees in a family law case is the fact that the Family Code contains numerous attorney fee statutes? (See, e.g., Fam. Code, §§ 270, 2030, 3028, 7640.) Is there any basis in the Family Code or elsewhere, other than section 1021.5, for Annette's recovery of attorney fees?

#06-71 *City of Dinuba v. County of Tulare*, S143326. The court requested the parties to file supplemental briefs addressing the following issues: (1) In light of the parties' agreement that the County has a statutory duty to properly allocate and distribute property taxes, may the City seek relief via a writ of mandate (Code Civ. Proc., § 1085)? (2) If so, what disposition would be appropriate here given that no writ of mandate claim was made in the City's second amended complaint?