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NEWS RELEASE

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Summary of Cases Accepted During the Week of June 7, 2010

[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.]

#10-64 *People v. Brown, S181963.* (C056510; 182 Cal.App.4th 1354; Lassen County Superior Court; CR024002.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Does Penal Code section 4019, as amended to increase presentence custody credits for certain offenders, apply retroactively?

#10-65 *Coito v. Superior Court, S181712.* (F057690; 182 Cal.App.4th 758; Stanislaus County Superior Court; 624500.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Is the statement of a witness that is taken in writing or otherwise recorded verbatim by an attorney or the attorney's representative entitled to the protection of the California work product privilege?

#10-66 *Episcopal Church Cases, S182407.* (G042454; nonpublished opinion; Orange County Superior Court; JCCP 4392.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court limited review to the following issue: Did the Court of Appeal properly direct the entry of judgment on the pleadings in favor of the national Episcopal Church under *Episcopal Church Cases* (2009) 45 Cal.4th 467?

#10-67 *Oasis West Realty, LLC v. Goldman, S181781.* (B217141; 182 Cal.App.4th 688; Los Angeles County Superior Court; SC101564.) Petition for review after the Court of Appeal reversed an order denying a

special motion to strike in a civil action. This case includes the following issue: Does an attorney breach the duty of loyalty owed a former client when he or she actively takes a position against the former client on the same issue for which the lawyer previously had been retained, even though the lawyer is acting on his or her own behalf and there is no subsequent representation or employment?

#10-68 *Professional Engineers in California Government v. Schwarzenegger*, S183411. (C061009, C061011, 6061020; Sacramento County Superior Court; 34-2008-800000126, 34-2009-800000134, 34-2009-800000135.) Consolidated appeals transferred on the court's own motion from the Court of Appeal. In addition to the issues already briefed in these appeals, which address the question of the Governor's general authority to institute a mandatory furlough of state employees by executive order, the court directed the parties to brief the following questions: (1) What effect, if any, does Government Code section 19996.22 — which provides in part that “[a]ny employee . . . who has been required, by the appointing power, . . . to involuntarily reduce his or her worktime contrary to the intent of this article . . . may file a grievance with the department” — have on the validity of the Governor's executive order instituting a mandatory furlough on state employees? (2) What effect, if any, does the provision of the revised 2008 Budget Act which reduced the appropriation for employee compensation for the 2008–09 fiscal year in an amount comparable to the savings sought to be achieved by the Governor's furlough order (Stats. 2009, 3d Ex. Sess. 2009–2010, ch. 2, § 36 (SBX3 2, § 36), passed by the Legislature and approved by the Governor on Feb. 20, 2009) have on (a) the validity of the Governor's executive order, and/or (b) the remedy, if any, to which the petitioning labor organizations may be entitled in these actions?

#10-69 *SeaBright Ins. Co. v. U.S. Airways, Inc.*, S182508. (A123726; 183 Cal.App.4th 219; San Francisco County Superior Court; 458707.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: When an employee of an independent contractor sustains an on-the-job injury, can the hirer of the contractor be liable on the theory that the hirer's breach of a non-delegable duty contained in a statute or regulation constituted an “affirmative contribution” to the injury within the meaning of *Hooker v. Dept. of Transp.* (2002) 27 Cal.4th 198, 212, footnote 3?

#10-70 *St. John's Well Child & Family Center v. Schwarzenegger*, S181760. (S125750; 182 Cal.App.4th 590.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Does the Governor's constitutional line item veto power “to reduce or eliminate one or more items of appropriation” (Cal. Const., art. IV, § 10, subd. (e)) apply to provisions in a mid-year emergency bill that reduce appropriation amounts of a previously enacted budget bill?

#10-71 *People v. Bowman*, S182172. (F058082; 182 Cal.App.4th 1616; Kern County Superior Court; BF123975A.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Dungo*, S176886 (#09-77), *People v. Gutierrez*, S176620 (#09-78), *People v. Lopez*, S177046 (#09-79), and *People v. Rutterschmidt*, S176213 (#09-80), which present issues concerning the right of confrontation under the Sixth Amendment when the results of forensic tests performed by a criminalist who does not testify at trial are admitted into evidence and how the decision of the United States Supreme Court in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. ___, 129 S.Ct. 2527, 174 L.Ed.2d 314, affects this court's decision in *People v. Geier* (2007) 41 Cal.4th 555.

#10-72 *Lewis v. Pepper Construction Co. Pacific*, S181596. (C060212; nonpublished opinion; Sacramento County Superior Court; 05AS04118.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in *Seabright Ins. Co. v. U.S. Airways, Inc.*, S182508 (#10-69), which includes the following issue: When an employee of an independent contractor sustains an on-the-job injury, can the hirer of the contractor be liable on the theory that the hirer's breach of a non-delegable duty contained in a statute or regulation constituted an "affirmative contribution" to the injury within the meaning of *Hooker v. Dept. of Transp.* (2002) 27 Cal.4th 198, 212, footnote 3?

#10-73 *People v. Rodriguez*, S181808. (F057533; 183 Cal.App.4th 1; Stanislaus County Superior Court; 1242767.) Petition for review after the Court of Appeal ordered the abstract of judgment corrected and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Brown*, S181963 (#10-64), which presents the following issue: Does Penal Code section 4019, as amended to increase presentence custody credits for certain offenders, apply retroactively?

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