



# NEWS RELEASE

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## Summary of Cases Accepted and Related Actions for Week of May 7, 2012

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

**#12-44 *People v. Goldsmith, S201443.*** (B231678; 203 Cal.App.4th 1515; Los Angeles County Superior Court; BR048189, 102693IN.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issues: (1) What testimony, if any, regarding the accuracy and reliability of the automated traffic enforcement system (ATES) is required as a prerequisite to admission of the ATES-generated evidence? (2) Is the ATES evidence hearsay and, if so, do any exceptions apply?

**#12-45 *Martinez v. Brownco Construction Co., Inc., S200944.*** (B226665; 203 Cal.App.4th 507; Los Angeles County Superior Court; KC050128.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: When a plaintiff makes two reasonable settlement offers under Code of Civil Procedure section 998, both of which expire by operation of law, does the second offer extinguish the first such that the later offer is the operative one for purposes of the cost-shifting provisions of section 998, subdivision (d)?

**#12-46 *People v. Mata, S201413.*** (B226256; 203 Cal.App.4th 898; Los Angeles County Superior Court; BA366071.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Did the trial court err in reseating a challenged prospective juror following defendant's successful *Wheeler/Batson* motion (*People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79)? (2) Did the defense

impliedly consent to reseating the juror? (3) If defense counsel did not consent, was the error reversible per se or subject to harmless error analysis?

**#12-47 *People v. Smith, S201186.*** (B223181; 203 Cal.App.4th 1051; Los Angeles County Superior Court; BA337647.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. This case presents the following issue: Should the trial court have instructed the jury, as requested, on misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)(1)) as a lesser included offense of resisting an executive officer in the lawful performance of his duty (Pen. Code, § 69)?

**#12-48 *People v. Borzakian, S201474.*** (B229748; 203 Cal.App.4th 525; Los Angeles County Superior Court; BR048012, BI20734.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Goldsmith, S201443* (#12-44), which presents the following issues: (1) What testimony, if any, regarding the accuracy and reliability of the automated traffic enforcement system (ATES) is required as a prerequisite to admission of the ATES-generated evidence? (2) Is the ATES evidence hearsay and, if so, do any exceptions apply?

**#12-49 *Buzenes v. Nuvel Financial Services, S200376.*** (B221870; nonpublished opinion; Los Angeles County Superior Court; BC407366.) Petition for review after the Court of Appeal affirmed an order denying a motion to compel arbitration. The court ordered briefing deferred pending decision in *Sanchez v. Valencia Holding Co. LLC, S199119* (#12-33), which includes the following issue: Does the Federal Arbitration Act (9 U.S.C. § 2), as interpreted in *AT&T Mobility LLC v. Concepcion* (2011) 563 U. S. \_\_\_, 131 S.Ct. 1740, preempt state law rules invalidating mandatory arbitration provisions in a consumer contract as procedurally and substantively unconscionable?

**#12-50 *People v. Rivers, S200398.*** (G043460; nonpublished opinion; Riverside County Superior Court; SWF006720.) 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.

**#12-51 *People v. Wollett*, S200871.** (B224204; nonpublished opinion; San Luis Obispo County Superior Court; F411505.) Petition for review after the Court of Appeal affirmed in part and reversed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Favor*, S189317 (#11-24), which presents the following issue: In order for an aider and abettor to be convicted of attempted willful, deliberate and premeditated murder by application of the natural and probable consequences doctrine, must a premeditated attempt to murder have been a reasonably foreseeable consequence of the target offense or offenses, or is it sufficient that an attempted murder would be reasonably foreseeable?

#### **DISPOSITIONS**

Review in the following cases was dismissed in light of *In re Lucas* (2012) 53 Cal.4th 839:

**#11-117 *People v. Superior Court (Gilbert)*, S195336.**

**#12-10 *People v. Superior Court (O'Connor)*, S197705.**

Review in the following case was dismissed:

**#11-145 *Hillside Memorial Park & Mortuary v. Golden State Water Co.*, S197767.** The opinion of the Court of Appeal, originally published at 199 Cal.App.4th 658, was ordered republished.

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