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# NEWS RELEASE

Release Number: **S.C. 37/06**

Release Date: **September 15, 2006**

## **Summary of Cases Accepted During the Week of September 11, 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.]*

**#06-101 *City of Santa Monica v. Gonzalez, S145571.*** (B182104, B184127, B184549; 140 Cal.App.4th 1134; Los Angeles County Superior Court; SS013071.) Petition for review after the Court of Appeal affirmed orders in a civil action and denied a petition for peremptory writ of mandate or prohibition. This case presents the following issues: (1) Does appointment of a receiver for a substandard building under Health and Safety Code section 17980.7, subdivision (c), require service of an “order or notice to repair or abate” on the property owner as detailed in section 17980.6? (2) Is substantial compliance with the requirement of first serving a section 17980.6 order or notice to repair or abate sufficient to permit the appointment of a receiver? (3) Did the trial court abuse its discretion in approving the receiver’s recommendation to demolish the residence at issue in this case where the owner objected and there was ample equity in the property to pay an independent contractor to correct all code violations?

**#06-102 *Consulting Engineers & Land Surveyors in California, Inc. v. Professional Engineers in California Government, S145341.***

(C048282; 140 Cal.App.4th 466; Sacramento County Superior Court; 03CS01654.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Did a collective bargaining agreement between the state and a union of state engineers, which required the state to use state engineers on public works projects before using private engineers to “ensure that [state] employees have preference over contract employees,” violate article XXII of the

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state Constitution, added by Proposition 35 (General Elec. (Nov. 7, 2000)), which provides that state entities “shall be allowed” to contract with private architectural and engineering firms for services on public works and that nothing in the Constitution shall be construed to “limit, restrict or prohibit” them from doing so?

**#06-103 *Sprint Telephony PCS, L.P. v. County of San Diego, S145541.*** (D045957; 140 Cal.App.4th 748; San Diego County Superior Court; GIC813987.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Do the statutes that give “telephone corporations” the right to erect “lines and other necessary fixtures of their lines” in the public right-of-way (Pub. Util. Code §§ 7901, 7901.1) apply to wireless telecommunications providers? (2) Does section 7901.1, subdivision (a), which gives local governments the right to control the “time, place and manner in which roads . . . are accessed,” permit a county ordinance that regulates the aesthetics of cellular telecommunications towers erected in the public right-of-way?

**#06-104 *Stark v. Superior Court, S145337.*** (C051073, C051074, C051075; 140 Cal.App.4th 567; Sutter County Superior Court; CRMS051001, CRMS051030, CRMS051031.) Petition for review after the Court of Appeal granted in part and denied in part petitions for peremptory writ of mandate. This case presents the following issues: (1) Does the offense of falsification of accounts or misappropriation of public funds by a public officer or employee in violation of Penal Code section 424 require intentional violation of a known legal duty or is it a general intent crime? (2) Does Government Code section 3060, authorizing an accusation for willful or corrupt misconduct in office, require a knowing and purposeful refusal to follow the law or does general intent suffice? (3) Can a defendant move to set aside an indictment under Penal Code section 995, subdivision (a)(1)(B), or object to the sufficiency of an accusation pursuant to Government Code section 3066 on the ground the grand jury was misinstructed on the required mental state? (4) What is the standard for assessing a district attorney’s alleged conflict of interest when the issue is raised on a motion under Penal Code section 995?

**#06-105 *People v. Delrio, S145573.*** (H028615; unpublished opinion; Santa Clara County Superior Court; BB405741.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#06-106 *People v. Howard, S145747.*** (H029743; unpublished opinion; Santa Clara County Superior Court; EE504589.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Delrio* and *Howard* deferred pending decision in *People v. Crandell*, S134883 (#05-186), which presents the following issue: Does the imposition of a

restitution fine under Penal Code section 1202.4, subdivision (b), violate a defendant's plea agreement if the fine was not an express term of the agreement?

## **DISPOSITIONS**

Review in the following cases was dismissed in light of *People v. Hudson* (2006) 38 Cal.4th 1002:

**#05-52 *People v. Oliver*, S130542.**

**#05-204 *People v. Watkins*, S136617.**

Review in the following case was dismissed in light of *People v. Brendlin* (2006) 38 Cal.4th 1107 and *People v. Saunders* (2006) 38 Cal.4th 1129:

**#05-210 *People v. George*, S136850.**

The following case was transferred for reconsideration in light of *People v. Brendlin* (2006) 38 Cal.4th 1107 and *People v. Saunders* (2006) 38 Cal.4th 1129:

**#05-77 *People v. Lamont*, S131308.**

The following case was transferred for reconsideration in light of *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223 and *Branick v. Downey Savings and Loan Assn.* (2006) 39 Cal.4th 235:

**#03-117 *Kids Against Pollution v. California Dental Association*, S117156.**

Review in the following case was dismissed in light of *Flatley v. Mauro* (2006) 39 Cal.4th 299:

**#05-102 *Harron v. Bonilla*, S131552.**

The following case was transferred for reconsideration in light of *Flatley v. Mauro* (2006) 39 Cal.4th 299:

**#06-19 *Hutton v. Law Offices of Herbert Hafif*, S140997.**

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