



# NEWS RELEASE

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## Summary of Cases Accepted During the Week of November 26, 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.]*

**#07-442 *People v. Gaines, S157008.*** (B192177; nonpublished opinion; Los Angeles County Superior Court; MA032254.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses and remanded with directions. The court limited review to the following issue: Is outright reversal or a remand for a showing of prejudice the appropriate remedy for a trial court's erroneous denial of a *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531)?

**#07-443 *Harris v. Superior Court, S156555.*** (B195121, B195370; 154 Cal.App.4th 164; Los Angeles County Superior Court; JCCP No. 4234.) Petition for review after the Court of Appeal granted and denied petitions for peremptory writ of mandate. This case presents the following issue: Do claims adjusters employed by insurance companies fall within the administrative exemption (Cal. Code Regs, tit. 8, § 11040) to the requirement that employees are entitled to overtime compensation?

**#07-444 *Hughes v. Pair, S157197.*** (B194307; 154 Cal.App.4th 1469, mod. 155 Cal.App.4th 1130b; Los Angeles County Superior Court; BC338385.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Did the Court of Appeal err in relying on definitions and standards under the Fair Employment and Housing Act (Gov. Code § 12900 et seq.) in evaluating plaintiff's claim for sexual harassment in violation of the Unruh Civil Rights Act (Civ. Code, § 51.9)?

(more)

**#07-445 *Lexin v. Superior Court, S157341.*** (D049251; 154 Cal.App.4th 1425; San Diego County Superior Court; SCD190930.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Did petitioners' service on the Board of the San Diego Retirement System, as it related to an increase in pension benefits for members of the system, violate the conflict of interest provisions of Government Code section 1090, and subject them to criminal prosecution, or did the non-interest exemption of Government Code section 1091.5, subdivision (a)(9) apply?

**#07-446 *San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School Dist., S156961.*** (A114679; 154 Cal.App.4th 866; Alameda County Superior Court; RG05235795.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Does Education Code section 7054 permit a school district to prohibit the teachers union from using the school's mailboxes to distribute a union newsletter to its members, if the newsletter includes endorsements for school board candidates? (2) Does the guarantee of liberty of speech in California Constitution, article I, section 2, assure that an employee organization may distribute its message to its members concerning electoral politics via school mailboxes?

**#07-447 *People v. Wagner, S156537.*** (C052049; 154 Cal.App.4th 81; Yolo County Superior Court; CRF036456.) Petition for review after the Court of Appeal voided a probation revocation proceeding and vacated the sentence imposed. This case includes the following issues: (1) Does Penal Code section 1381, which provides that a state prisoner may demand a trial or sentencing within 90 days of a written demand when "any other indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced" is currently pending, apply to a pending probation revocation proceeding, or is Penal Code section 1203.2a, which provides for sentencing in absentia for probationers incarcerated on an unrelated offense, the exclusive means for an incarcerated probationer to receive concurrent sentencing? (2) Did the Court of Appeal properly calculate the end of defendant's probationary term for the purpose of calculating the last day upon which the prosecution may refile a probation revocation proceeding dismissed pursuant to Penal Code section 1381?

**#07-448 *People v. Ayala, S157148.*** (H030471; 155 Cal.App.4th 604; Santa Clara County Superior Court; CC589323.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses and remanded for resentencing.

**#07-449 *People v. Lacerda, S157590.*** (H030026; nonpublished opinion; Santa Clara County Superior Court; FF407302.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Ayala* and *Lacerda* deferred pending decision in *People v. French*, S148845 (#07-10), which includes the question whether the trial court violated defendant's Sixth Amendment right to a jury trial, as interpreted in *Cunningham v. California* (2007) 549 U.S. \_\_\_, 127 S.Ct. 856, by imposing an upper term sentence based on aggravating factors not found true by the jury, where the defendant entered a no contest plea and was sentenced in accordance with his plea agreement.

**#07-450 *People v. Goodsby*, S156854.** (C052534; nonpublished opinion; Shasta County Superior Court; 05F1064.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-451 *People v. Guerrero*, S156049.** (B187943; nonpublished opinion; Los Angeles County Superior Court; LA047140.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

**#07-452 *People v. Ramos*, S157451.** (B192823; nonpublished opinion; Los Angeles County Superior Court; NA064531.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Goodsby*, *Guerrero*, and *Ramos* deferred pending decision in *People v. Towne*, S125677 (#04-75), which includes the question whether a trial court violates a defendant's Sixth Amendment right to a jury trial, as interpreted in *Cunningham v. California* (2007) 549 U.S. \_\_\_, 127 S.Ct. 856, by imposing an upper term sentence based on the fact that the defendant had served a prior prison term, the defendant was on probation or parole when the crime was committed, or the defendant's prior performance on probation or parole was unsatisfactory, if those aggravating factors were not found true by the jury.

**#07-453 *Vasquez v. State of California*, S156793.** (D048371; 154 Cal.App.4th 406; San Diego County Superior Court; GIC740832.) Petition for review after the Court of Appeal affirmed an order awarding attorney fees in a civil action. The court ordered briefing deferred pending decision in *Vasquez v. State of California*, S143710 (#06-91), which presents the following issue: Does the rule that, in order to receive attorney fees under Code of Civil Procedure section 1021.5, the plaintiff must first reasonably attempt to settle the matter short of litigation, apply to this case?

**#07-454 *People v. Warner*, S157246.** (F051027; 155 Cal.App.4th 57; Stanislaus County Superior Court; 1085516.) 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. Gonzalez*, S149898 (#07-86), which presents the following issue: When separate firearm enhancements under Penal Code section 12022.5

and subdivisions (b), (c), and/or (d) of section 12022.53 are found true and the longest enhancement is imposed, should the lesser enhancements be stricken, stayed or simply not imposed at all?

## **DISPOSITIONS**

Review in the following case was dismissed in light of *Conservatorship of Ben C.* (2007) 40 Cal.4th 529:

***#05-184 Conservatorship of Karen N., S135582.***

The following cases were transferred for reconsideration in light of *Gentry v. Superior Court* (2007) 42 Cal.4th 443:

***#06-50 Jones v. Citigroup, Inc., S141753.***

***#07-72 Konig v. U-Haul Co. of California, Inc., S149883.***

***#07-331 Massie v. Ralphs Grocery Company, S153059.***

Review in the following case was dismissed in light of *Gentry v. Superior Court* (2007) 42 Cal.4th 443:

***#07-136 Firchow v. Citibank (South Dakota), N.A., S150386.***

The following case was transferred for reconsideration in light of *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061:

***#06-134 City of Los Angeles v. 2000 Jeep Cherokee, S147724.***