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NEWS RELEASE

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Summary of Cases Accepted During the Week of April 25, 2005

[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 description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#05-93 *Californians for Disability Rights v. Mervyn's*, S131798.

(A106199; 126 Cal.App.4th 386; Alameda County Superior Court; 2002-051738.) Petition for review after the Court of Appeal denied a motion to dismiss an appeal from the judgment in a civil action. This case presents the following issue: Do the provisions of Proposition 64 (Gen. Elec. (Nov. 2, 2004)) that limit standing to bring an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) to “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” (Bus. & Prof. Code, § 17204, as amended) apply to actions pending when the provisions of the proposition became effective on November 3, 2004?

#05-94 *Branick v. Downey Savings & Loan Assn.*, S132433. (B172981; 126 Cal.App.4th 828; Los Angeles County Superior Court; BC280755.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: If the standing limitations of Proposition 64 apply to actions under the Unfair Competition Law that were pending on November 3, 2004, may a plaintiff amend his or her complaint to substitute in or add a party that satisfies the standing requirements of Business and Professions Code section 17204, as amended, and does such an amended complaint relate back to the initial complaint for statute of limitations purposes?

#05-95 *Kibler v. Northern Inyo County Local Hospital Dist.*, S131641.

(E035085; 126 Cal.App.4th 713; Inyo County Superior Court; CVCV02-32216.) Petition for review after the Court of Appeal affirmed the judgment in a civil action.

(over)

#05-96 *O’Meara v. Palomar-Pomerado Health System, S313874.* (D043099; 125 Cal.App.4th 1324; San Diego County Superior Court; 754197.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike under Code of Civil Procedure section 425.16.

Kibler and *O’Meara* present the following issue: Is an action arising out of the hospital peer review mandated by Business and Professions Code section 809, subdivision (a)(8), subject to a special motion to strike under the anti-SLAPP statute because such review is an “official proceeding” or implicates a public issue or issue of public interest within the meaning of Code of Civil Procedure section 425.16, subdivisions (e)(2) and (e)(4)?

#05-97 *San Francisco Fire Fighters Local 798 v. City and County of San Francisco, S131818.* (A104822; 125 Cal.App.4th 1307; San Francisco County Superior Court; CPF 03-503025.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Was the finding by the city’s civil service commission that a proposed promotional system was necessary to ensure compliance with anti-discrimination laws, and therefore exempt from the otherwise applicable requirement of the city charter that changes in terms and conditions of firefighter employment be submitted to binding arbitration after the parties reached an impasse in bargaining, subject to judicial review under an abuse of discretion standard, or was that determination subject to de novo review by the trial court?

#05-98 *Benson v Kwikset Corp., S132443.* (G030956; 126 Cal.App.4th 887; Orange County Superior Court; 00CC01275.) Petition for review after the Court of Appeal vacated and remanded in part and otherwise affirmed the judgment in a civil action.

#05-99 *Bivens v. Corel Corp., S132695.* (D043407; 126 Cal.App.4th 1392; San Diego County Superior Court; GIC802976.) Petition for review after the Court of Appeal affirmed the judgment in a civil action.

#05-100 *Lytwyn v. Fry’s Electronics, Inc., S133075.* (D042401; 126 Cal.App.4th 1455; San Diego County Superior Court; 787977.) Review on the court’s own motion after the Court of Appeal reversed an order granting a preliminary injunction.

The court ordered briefing in *Benson*, *Bivens*, and *Lytwyn* deferred pending decision in *Californians for Disability Rights v. Mervyn’s*, S131798 (#05-93), which presents the following issue: Do the provisions of Proposition 64 (Gen. Elec. (Nov. 2, 2004)) that limit standing to bring an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) to “any person who has suffered injury in fact and has lost money or property as a

result of such unfair competition” (Bus. & Prof. Code, § 17204, as amended) apply to actions pending when the provisions of the proposition became effective on November 3, 2004?

#05-101 *People v. Gorman*, S131831. (A102310; unpublished opinion; Humboldt County Superior Court; CR011617CS.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Black*, S126182 (#04-83) and *People v. Towne*, S125677 (#04-75), which include the following issues: (1) Does *Blakely v. Washington* (2004) 542 U.S. ___, 124 S.Ct. 2531, preclude a trial court from making findings on aggravating factors in support of an upper term sentence? (2) What effect does *Blakely* have on a trial court’s imposition of consecutive sentences?

#05-102 *Harron v. Bonilla*, S131552. (D043903; 125 Cal.App.4th 738; San Diego County Superior Court; GIC773848.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike under Code of Civil Procedure section 425.16. The court ordered briefing deferred pending decision in *Flatley v. Mauro*, S128429 (#04-146), which presents the following issue: When a plaintiff files a cause of action based upon illegal conduct (e.g., extortion) allegedly engaged in by the defendant in relation to prior litigation, is the plaintiff’s action subject to a special motion to strike under the anti-SLAPP statute (Code Civ. Proc., § 425.16)?

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