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NEWS RELEASE

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Summary of Cases Accepted During the Week of June 16, 2008

[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.]

#08-96 *City of San Jose v. Operating Engineers Local Union No. 3, S162647.* (H030272; 160 Cal.App.4th 951; Santa Clara County Superior Court; CV064707.) Petition for review after the Court of Appeal affirmed a judgment of dismissal of a civil action. This case presents the following issue: Does the Public Employment Relations Board have the exclusive initial jurisdiction to determine whether certain “essential” public employees covered by Meyers-Milias-Brown Act (Gov. Code, §§ 3500 3511) have the right to strike, or does that jurisdiction rest with the superior court?

#08-97 *Goodman v. Lozano, S162655.* (G036774, G037091; 159 Cal.App.4th 1313, mod. 160 Cal.App.4th 562e; Orange County Superior Court; 01CC02874.) Petition for review after the Court of Appeal affirmed an award of attorney fees in a civil action. This case presents the following issue: When a plaintiff settles with one tortfeasor and goes to trial against another but obtains no additional recovery because the amount of damages awarded is less than the setoff amount based on the pretrial settlement, is that plaintiff nevertheless a prevailing party as a matter of law for purposes of an award of fees and costs under Code of Civil Procedure section 1032?

#08-98 *Keener v. Jeld-Wen, Inc., S163430.* (D049471; 161 Cal.App.4th 848; San Diego County Superior Court; GIN031341.) 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 issues: (1) Does failure to object to incomplete polling before the jury is

discharged waive the argument that the polling was incomplete and the verdict invalid?

(2) For purposes of Code of Civil Procedure section 618, which provides that a jury verdict “is complete and the jury discharged from the case” if “no disagreement is expressed” upon polling the jurors, is a juror’s silence during polling, if the court failed to poll the juror, an “expressed” disagreement with the verdict?

#08-99 *Murray v. Alaska Airlines, Inc.*, S162570. (9th Cir. No. 06-15847; 522 F.3d 920; Northern District of California; CV-05-03633-MJJ.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: “Should issue-preclusive effect be given to a federal agency’s investigative findings, when the subsequent administrative process provides the complainant the option of a formal adjudicatory hearing to determine the contested issues de novo, as well as subsequent judicial review of that determination, but the complainant elects not to invoke his right to that additional process?”

#08-100 *People v. Abercrombie*, S162743. (C051865; 161 Cal.App.4th 68; Sacramento County Superior Court; 04F10941.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Towne*, S125677 (#04-75), which presents issues concerning the use as aggravating sentencing of such factors as being on probation or parole when a crime was committed and prior unsatisfactory performance on probation or parole.

#08-101 *People v. Bergara*, S162896. (H030747; nonpublished opinion; Santa Clara County Superior Court; CC585708.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Cross*, S139791 (#06-26), which includes the following issues: (1) Can a legal, surgical abortion support an enhancement under Penal Code section 12022.7 for the defendant’s personal infliction of great bodily injury in committing the offense that led to the victim’s pregnancy? (2) Can the pregnancy itself constitute such great bodily injury?

#08-102 *People v. Davis*, S162400. (C052803; nonpublished opinion; Yuba County Superior Court; CRF03-702.) Petition for review after the Court of Appeal voided a probation revocation proceeding and vacated the sentence imposed. The court ordered briefing deferred pending decision in *People v. Wagner*, S156537 (#07-447), which includes the following issue: 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?

STATUS

#07-34 *In re Martinez*, S141480. The court requested respondent to file a supplemental brief directed to the following question: What is the impact of *Medellin v. Texas* (2008) __ U.S. __, 128 S.Ct. 1346, 170 L.Ed.2d 190, on petitioner's claim that violation of article 36 of the Vienna Convention entitles him to habeas corpus relief?

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