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# NEWS RELEASE

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## Summary of Cases Accepted During the Week of October 29, 20007

*[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.]*

**#07-432 *Christoff v. Nestlé USA, Inc.*, S155242.** (B182880; 152 Cal.App.4th 1439; Los Angeles County Superior Court; EC036163.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) Does the single publication rule (see Civ. Code, § 3425.3) apply to an action under Civil Code section 3344 for appropriation of likeness? (2) Is the use of a likeness on product labels a “publication” for purposes of the single publication rule? (3) Under what circumstances, if any, would the continuing use of a likeness on product labels and in advertisements marketing a product constitute “republication” and give rise to a new cause of action? (4) Does the discovery rule apply in an action for appropriation of likeness?

**#07-433 *In re Lewis*, S117235.** Original proceeding. In this case, which is related to the automatic appeals in *People v. Lewis* (1990) 50 Cal.3d 262 and *People v. Lewis* (2004) 33 Cal.4th 214, the court issued an order to show cause limited to claims why petitioner is not entitled to relief (1) as a result of trial counsel’s failure to adequately investigate and present mitigating evidence at the penalty phase of petitioner’s trial, and (2) on the ground that he is mentally retarded within the meaning of *Atkins v. Virginia* (2002) 536 U.S. 304. (See *In re Hawthorne* (2005) 35 Cal.4th 40.)

**#07-434 *People v. Medina*, S155823.** (B189049; 153 Cal.App.4th 610; Los Angeles County Superior Court; MA028151.) Petition for review after the Court of Appeal affirmed one defendant’s judgment of

conviction of criminal offenses and reversed two other defendants' judgments of conviction of criminal offenses. This case presents the following issue: Did the Court of Appeal err in holding the evidence insufficient to support defendants' convictions for murder and attempted murder under the natural and probable consequences doctrine based on the target offenses of assault and battery?

**#07-435 *People v. Thomas*, S155883.** (B183432; nonpublished opinion; Los Angeles County Superior Court; MA029875.) Petition for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Scott*, S136498 (#05-215), which presents the following issue: Did the trial court err in instructing the jury that all employees have constructive possession of their employer's property during a robbery, and, if so, what is the proper standard for determining whether an employee has constructive possession of the employer's property during a robbery?

**#07-436 *People v. Vasquez*, S156297.** (D042623; nonpublished opinion; San Diego County Superior Court; SCN140092.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense. The court ordered briefing 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.

## **DISPOSITION**

Review in the following case was dismissed in light of circumstances, arising since review was granted, that require a majority of the permanent members of the court to recuse themselves:

**#05-78 *Lockheed Litigation Cases*, S132167.**