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# NEWS RELEASE

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## **Summary of Cases Accepted During the Week of November 17, 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.]*

**#08-165 *Catlin v. Superior Court, S167148.*** (F053705; 166 Cal.App.4th 133; Kern County Superior Court; 30594.) Petition for review after the Court of Appeal denied a peremptory petition for writ of mandate. This case presents the following issue: Must a motion under Penal Code section 1054.9, which authorizes prisoners under sentence of death or life without the possibility of parole to bring post-conviction discovery motions, be brought within a reasonable time period?

**#08-166 *Clayworth v. Pfizer, Inc., S166435.*** (A116798; 165 Cal.App.4th 209, mod. 165 Cal.App.4th 1290a; Alameda County Superior Court; RG04172428.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) When plaintiffs pay overcharges on goods or services as a result of the anticompetitive conduct of defendant sellers but recover the overcharges through increased prices at which the goods or services are sold to end users, may defendants assert a “pass-on” defense and argue that plaintiffs were not injured because they did not suffer financial loss as a result of the anticompetitive conduct? (2) Is restitution available under the Unfair Competition Law (Bus. & Prof. Code, 17200 et seq.) to plaintiffs who recovered from third persons the overcharges paid to defendants? (3) When plaintiffs recover from third persons the overcharges paid to defendants, have they suffered actual injury and lost money or property for purposes of establishing standing under the Unfair Competition Law, as amended by Proposition 64?

**#08-167 *People v. Johnson*, S166894.** (H031095; nonpublished opinion; Santa Clara County Superior Court; CC619063.) Petition for review after the Court of Appeal dismissed an appeal from a judgment of conviction of criminal offenses. This case presents the following issue: Is a certificate of probable cause a prerequisite to an appeal claiming ineffective assistance of counsel for failure to assist a client in a motion to withdraw a plea?

**#08-168 *Pearson Dental Supplies, Inc. v. Superior Court*, S167169.** (B206740; 166 Cal.App.4th 71; Los Angeles County Superior Court; BC359605.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) What standard of judicial review applies to an arbitrator's decision on an employee's anti-discrimination claim under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) that is arbitrated pursuant to a mandatory employment arbitration agreement? (2) Can such a mandatory arbitration agreement restrict an employee from seeking administrative remedies for violations of the Act?

**#08-169 *People v. Perez*, S167051.** (B198165; nonpublished opinion; Los Angeles County Superior Court; BA298659.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Were defendant's convictions for attempted murder of seven police officers and a civilian supported by sufficient evidence when only one shot was fired and only one officer was hit?

**#08-170 *Strauss v. Horton*, S168047.** Original proceeding.

**#08-171 *Tyler v. State of California*, S168066.** Original proceeding.

**#08-172 *City and County of San Francisco v. Horton*, S168078.** Original proceeding.

The court issued an order to show cause in *Strauss*, *Tyler*, and *City and County of San Francisco* directing the parties to brief and argue the following issues: (1) Is Proposition 8 invalid because it constitutes a revision of, rather than an amendment to, the California Constitution? (See Cal. Const., art. XVIII, §§ 1-4.) (2) Does Proposition 8 violate the separation of powers doctrine under the California Constitution? (3) If Proposition 8 is not unconstitutional, what is its effect, if any, on the marriages of same-sex couples performed before the adoption of Proposition 8?

**#08-173 *People v. Martinez*, S166970.** (H031192; nonpublished opinion; Santa Clara County Superior Court; CC584680.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in *People v. Chun*, S157601 (#07-469), which includes the following issue: Does

the offense of discharging a firearm at an occupied vehicle in violation of Penal Code section 246 merge with a resulting homicide under *People v. Ireland* (1969) 70 Cal.2d 522, if there is no admissible evidence of an independent and collateral criminal purpose other than to commit an assault?

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