SUPREME COURT CALENDAR
SAN FRANCISCO SESSION
SEPTEMBER 8 and 9, 2004

(SECOND AMENDED)

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom 350 McAllister Street, Fourth Floor, San Francisco, California, on September 8 and 9, 2004.

WEDNESDAY, SEPTEMBER 8, 2004—9:00 A.M.

(1) S112862 Graham v. Daimler-Chrysler
(2) S112943 Tipton-Whittingham v. City of Los Angeles
(3) S121568 McClung v. Employment Development Department
(4) S113799 Elsner v. Uveges (*Continued to the October 2004 calendar*.)

1:30 P.M.

(5) S110377 People v. Williams
(6) S030956 People v. William James Ramos **[Automatic Appeal]**
(7) S028747 People v. Rodney Jesse San Nicolas **[Automatic Appeal]**

THURSDAY, SEPTEMBER 9, 2004—9:00 A.M.

(8) S120903 Morohoshi v. Pacific Home
(9) S106273 People v. Seel

1:30 P.M.

(10) S108220 Stockett v. Association of California Water Agencies
(11) S117641 People v. Briceno
(12) S009038 People v. Richard Dean Turner **[Automatic Appeal]**

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

SUPREME COURT CALENDAR
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The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

WEDNESDAY, SEPTEMBER 8, 2004—9:00 A.M.

(1) Graham v. Daimler-Chrysler, S112862

#03-26 Graham v. Daimler-Chrysler, S112862. (B152928; unpublished opinion; Superior Court of Los Angeles County; BC 21564.) Petition for review after the Court of Appeal affirmed an order awarding attorney fees in a civil action. This case includes the following issue: Should California reconsider the propriety of awarding attorney fees under the California private attorney general statute (Code Civ. Proc., § 1021.5) to a party who did not receive a favorable judgment but whose lawsuit was the "catalyst" inducing the other party to modify its behavior, in light of the United States Supreme Court's recent disapproval of the catalyst theory in interpreting certain federal attorney fees statutes in *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources* (2001) 532 U.S. 598?

(2) Tipton-Whittingham v. City of Los Angeles, S112943

#03-36 Tipton-Whittingham v. City of Los Angeles, S112943. (9th Cir. Nos. 01-56991, 01-57016; 316 F.3d 1058; Central District of California; CV 94-03240-TJH.) Request under rule 29.8 of the California Rules of Court 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 questions presented are:

"(1) Under California law, may attorneys' fees as provided for in California Code of Civil Procedure § 1021.5 and the California Fair Employment and Housing Act § 12965(b) be awarded where the plaintiff has been the 'catalyst' in bringing about the relief sought by the litigation? (2) If the catalyst theory is viable under California law, will that theory support an award of attorneys' fees where the plaintiff 'activates' the defendant to modify his behavior? See *Maria P. v. Riles,* 43 Cal.3d 1281, 1291–92 (1987) (citations omitted). Or, does California law require a *judicially recognized* change in the legal relationship between the parties, such as a judgment on the merits, a consent decree, or a judicially-ordered settlement?"

(3) McClung v. Employment Development Department, S121568

#04-16 McClung v. Employment Development Department, S121568. (C034110; 113 Cal.App.4th 335; Superior Court of Sacramento County; 98AS00092.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court limited review to the following issue: Does Government Code section 12940(j)(3)—a provision of the California Fair Employment and Housing Act (FEHA) enacted in 2000, which imposes personal liability on nonsupervisory coworkers who engage in harassment in violation of FEHA—apply retroactively, despite the decision in *Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132, which held that FEHA, prior to the 2000 amendment, did not provide for such liability?

(4) Elsner v. Uveges, S113799 (Continued to the October 2004 calendar.)

1:30 P.M.

(5) People v. Williams, S110377

#02-192 People v. Williams, S110377. (D038602; unpublished opinion.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Where a defendant is sentenced in two different cases under the three-strikes law, can the

enhancements for prior serious felony convictions under Penal Code section 667(a)(1) be imposed on the sentence in each case or only once (see *People v. Tassell* (1984) 36 Cal.3d 77)?

(6) People v. William James Ramos, S030956 [Automatic Appeal]
This matter is an automatic appeal from a judgment of death.

(7) People v. Rodney Jesse San Nicolas, S028747 [Automatic Appeal]
This matter is an automatic appeal from a judgment of death.

THURSDAY, SEPTEMBER 9, 2004—9:00 A.M.

(8) Morohoshi v. Pacific Home, S120903
#04-07 *Morohoshi v. Pacific Home*, S120903. (B159594; 112 Cal.App.4th 937; Los Angeles County Superior Court; NC025395.) Petition for review after the Court of Appeal modified and affirmed the judgment in a civil action. This case presents the following issues: (1) Is a regional health center vicariously liable for the negligence of a facility providing services to a developmentally disabled person, based on the regional center's statutory duties under the Lanterman Developmental Disabilities Service Act (Welf. & Inst. Code, § 4500 et seq.)? (2) Did the Court of Appeal's earlier decision in this case (*Morohoshi v. Pacific Home* (Aug. 21, 2001, B143379)) resolve the foregoing vicarious liability issue, and is that decision controlling in this appeal under the law of the case doctrine?

(9) People v. Seel, S106273
#02-101 People v. Seel, S106273. (B143771; unpublished opinion.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of a criminal offense. This case includes the following issue: When defendant's attempted murder conviction is affirmed but the premeditation finding under Penal Code section 664(a) is reversed for insufficient evidence, is retrial of the sentencing allegation barred by the double jeopardy provisions of the federal or state Constitution?

1:30 P.M.

(10) Stockett v. Association of California Water Agencies, S108220

#02-149 Stockett v. Association of California Water Agencies, S108220. (C035330; unpublished opinion.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Did the Court of Appeal properly reverse a judgment in favor of a public employee in an action for wrongful termination in violation of public policy when some of the alleged violations of public policy that were presented to the jury in the wrongful termination action were not specifically identified in the claim that the public employee filed with the public entity prior to commencing the court action?

(11) People v. Briceno, S117641

#03-121 People v. Briceno, S117641. (G029525, G029607; 109 Cal.App.4th 1330; Superior Court of Orange County; 00NF3394.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does a felony, which is not otherwise identified in Penal Code section 1192.7(c) as a serious felony, nonetheless come within that section (and thus qualify as a strike under the three-strikes law) whenever there is a finding that the felony was committed for the benefit of a criminal street gang (see § 186.22(b)), because the offense is then "any felony offense, which would also constitute a felony violation of Section 186.22" within the meaning of section 1192.7(c)(28), or does the quoted language of section 1192.7(c)(28) refer only to a gang-related offense that is defined as a substantive felony offense by section 186.22(a)?

(12) People v. Richard Dean Turner, S009038 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.