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May 5, 1999

Honorable Chief Justice and Associate Justices
California Supreme Court
350 McAllister St., Rm. 1295
San Francisco, CA 94102-3600

Re: *County of Los Angeles v. Superior Court (Schonert)*, Case No. S053930

Dear Chief Justice and Associate Justices:

Pursuant to California Rules of Court, rule 29.3, we call the Court's attention to the following additional authorities that were not available in time to have been included in Petitioners' Brief on the Merits. For the Court's convenience we have enclosed copies of the new authorities in a separate tabbed document.

Morse, Death Actions for Federal Rights Violations in Alabama (1998) 29 Cumb.L.Rev. 11. In a letter brief dated December 9, 1997, we informed the Court that the United States Supreme Court had dismissed certiorari in a case involving the Alabama Wrongful Death Act. See *City of Tarrant v. Jefferson* (Ala. 1996) 682 So.2d 29, cert. granted (1997) 520 U.S. 1154, cert. dismiss. (1997) 522 U.S. 75. Counsel for the City of Tarrant has since written a law review article about the case, which discusses some of the issues raised in this action. A copy of the article appears under Tab 1.

Allred v. Solaray, Inc. (D.Utah 1997) 971 F.Supp. 1394. In this case, a federal district court in Utah ruled that a decedent's claim under the federal Americans with Disabilities Act did not survive his death. The court determined that it was bound by 42 U.S.C. section 1988 to apply Utah's survival statute. That statute limits survival to claims "arising out of personal injury to the person or death." It also limits damages in any survival action to "the out-of-pocket expenses incurred by or on behalf of [the decedent] as the result of his injury." Utah Code Ann. § 78-11-12. A copy of the decision appears under Tab 2. A copy of Utah's survival statute appears under Tab 3.

Pietrowski v. Town of Dibble (10th Cir. 1998) 134 F.3d 1006. In this case, the Tenth Circuit Court of Appeals applied an Oklahoma survival statute, which provides that malicious prosecution actions abate upon the death of the *defendant*. The court ruled that abating a section 1983 claim that sounded in malicious prosecution did not defeat the policies underlying the statute. A copy of the decision appears under Tab 4.

Honorable Chief Justice and Associate Justices

Re: *County of Los Angeles v. Superior Court (Schonert)*, Case No. S053930

May 5, 1999

Page 2

R.I. General Laws § 9-1-8. Petitioners' Brief on the Merits identified (at p. 12, fn. 4) five jurisdictions that limited recovery of damages in a survival action in a manner similar to Code of Civil Procedure section 377.34. Additional research has disclosed two additional jurisdictions—(1) Utah, as reflected in the statute applied in the *Allred* case, and (2) Rhode Island, as reflected in this provision. A copy of the Rhode Island statute appears under Tab 5.

Very truly yours,

Calvin House