



**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
LOS ANGELES SESSION
DECEMBER 5, 2023**

In accordance with [Administrative Order 2023-05-11](#), the Supreme Court has resumed in-person oral argument sessions. Counsel have the option to appear in person at these sessions, or remotely via video. The public may attend in person and will also continue to have access to argument via live-streaming on the judicial branch website: <https://supreme.courts.ca.gov/>.

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Ronald Reagan State Office Building, 300 South Spring Street, Third Floor, North Tower, Los Angeles, California, on December 5, 2023.

TUESDAY, DECEMBER 5, 2023 — 9:00 A.M.

- (1) Niedermeier (Lisa) v. FCA US LLC, S266034
- (2) People v. Clark (Kejuan Darcell), S275746
- (3) Haggerty (Brianna McKee) v. Thornton (Nancy F.) et al., S271483
(*Guerrero, C. J., not participating; Poochigian, J., assigned justice pro tempore*)

1:30 P.M.

- (4) People v. Hardin (Tony), S277487
- (5) TriCoast Builders, Inc. v. Fonnegra (Nathaniel), S273368

GUERRERO

Chief Justice

If exhibits are to be transmitted to this court, counsel must apply to the court for permission.
(See Cal. Rules of Court, rule 8.224(c).)

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The following case summaries are issued to inform the public about cases that the California Supreme Court has scheduled for oral argument and of their general subject matter. In most instances, 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. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, DECEMBER 5, 2023 — 9:00 A.M.

(1) *Niedermeier (Lisa) v. FCA US LLC, S266034*

#21-50 Niedermeier v. FCA US LLC, S266034. (B293960; 56 Cal.App.5th 1052; Los Angeles County Superior Court; BC638010.) Petition for review after the Court of Appeal modified and affirmed the judgment in a civil action. This case presents the following issues: (1) Does the statutory restitution remedy under the Song-Beverly Act (Civ. Code, § 1790 et seq.) necessarily include an offset for a trade-in credit? (2) If the amount that a consumer has received in a trade-in transaction must be subtracted from the consumer’s recovery, should that amount be subtracted from the statutory restitution remedy or from the consumer’s total recovery?

(2) *People v. Clark (Kejuan Darcell), S275746*

#22-275 People v. Clark, S275746. (E075532; 81 Cal.App.5th 133; Riverside County Superior Court; RIF1503800.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Can the People meet their burden of establishing a “pattern of criminal gang activity” under Penal Code section 186.22 as amended by Assembly Bill No. 333 (Stats. 2021, ch. 699) by presenting evidence of individual gang members committing separate predicate offenses, or must the People provide evidence of two or more gang members working in concert with each other during each predicate offense?

(3) ***Haggerty (Brianna McKee) v. Thornton (Nancy F.) et al., S271483***

(Guerrero, C. J., not participating; Poochigian, J., assigned justice pro tempore)

#21-562 Haggerty v. Thornton, S271483. (D078049; 68 Cal.App.5th 1003; San Diego County Superior Court; 37-2019-00028694-PR-TR-CTL.) Petition for review after the Court of Appeal affirmed an order in a probate proceeding. This case presents the following issue: Can a trust be modified according to the statutory procedures for revocation of a trust (Prob. Code, § 15401) if the trust instrument itself sets forth identical procedures for modification and revocation?

1:30 P.M.

(4) ***People v. Hardin (Tony), S277487***

#23-1 People v. Hardin, S277487. (B315434; 84 Cal.App.5th 273; Los Angeles County Superior Court; A893110.) Petition for review after the Court of Appeal reversed an order denying a post-judgment motion in a criminal matter. This case presents the following issues: (1) Does Penal Code section 3051, subdivision (h), violate the Equal Protection Clause of the Fourteenth Amendment by excluding young adults sentenced to life without the possibility of parole from youth offender parole consideration, while young adults sentenced to parole-eligible terms are entitled to such consideration? (2) Whether the first step of the two-part inquiry used to evaluate equal protection claims, which asks whether two or more groups are similarly situated for the purposes of the law challenged, should be eliminated in cases concerning disparate treatment of classes or groups of persons, such that the only inquiry is whether the challenged classification is adequately justified under the applicable standard of scrutiny?

(5) ***TriCoast Builders, Inc. v. Fonnegra (Nathaniel), S273368***

#22-108 TriCoast Builders, Inc. v. Fonnegra, S273368. (B303300; 74 Cal.App.5th 239; Los Angeles County Superior Court; PC056615.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) When a trial court denies a request for relief from a jury waiver under Code of Civil Procedure section 631, and the losing party does not seek writ review but instead appeals from an adverse judgment after a bench trial, must the appellant show “actual prejudice”

when challenging the order on appeal? (2) Does a trial court abuse its discretion when it denies a request for relief from a jury trial waiver without a showing that granting the request will prejudice the opposing party or the trial court?