

[Attorney's name, bar number,  
address and telephone number]

Attorney for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,

FIRST APPELLATE DISTRICT

DIVISION \_\_\_\_\_

PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff and Respondent,

v.

\_\_\_\_\_,

Defendant and Appellant.

A \_\_\_\_\_

( \_\_\_\_\_ County Superior Court  
No. \_\_\_\_\_ )

**APPELLANT'S MOTION TO FILE AMENDED NOTICE OF APPEAL;  
POINTS AND AUTHORITIES IN SUPPORT**

TO THE PRESIDING JUSTICE OF DIVISION \_\_\_\_\_ OF THE FIRST DISTRICT  
COURT OF APPEAL:

Appellant hereby moves, through counsel, pursuant to rule 8.304 of the California Rules  
of Court for relief from default and to allow filing of the attached amended Notice of Appeal [to  
expand/limit the grounds for appeal].

This motion is based on this notice, the attached declaration and points and authorities  
and this court's records and files in this matter

DATED: \_\_\_\_\_

Respectfully submitted,

By: \_\_\_\_\_

[Attorney's signature]  
Attorney for Appellant

## **POINTS AND AUTHORITIES IN SUPPORT**

### **I. FACTUAL BACKGROUND**

[Briefly set forth procedural facts leading to filing of Notice of Appeal, including the timeliness of the Notice and grounds stated in the Notice].

### **II. UNDER THE CIRCUMSTANCES, APPELLANT IS ENTITLED TO FILE AN AMENDED NOTICE OF APPEAL.**

The Notice of Appeal here is not in literal compliance with rule 8.304 of the California Rules of Court, because it does not expressly indicate the appeal was taken on grounds discussed in the Opening Brief, filed concurrently with this motion. The brief argues [briefly describe issue, e.g., that appellant's motion to suppress was erroneously denied, or that appellant's sentence was erroneously imposed]. Because the issues raise in the brief do not implicate the need for a Certificate of Probable Cause to Appeal (see, Cal. Rules of Ct., rule 8.304(b)), "the notice of appeal must be liberally construed." (See, *People v. Jones* (1995) 10 Cal.4th 1102, 1108-1109 [former rule 31(d) only limited conditions under which an appeal would be "operative," not the issues that may be addressed in an "operative" appeal], overruled on another point in *In re Chavez* (2003) 30 Cal.4th 643, 656 [no relief is available from untimeliness].)

Further, rule 8.60(d) provides that "for good cause, a reviewing court may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal or a timely statement of reasonable grounds in support of a certificate of probable cause." The flaw, if any, in the Notice of Appeal here does not relate to its timeliness, but rather its statement of a specific ground for appeal to exempt it from the Certificate of Probable Cause requirement. Since appellant only challenges the judgment in the manner permitted without a Certificate of Probable Cause, leave to amend is warranted. (See, *People v. Jones, supra*, 10 Cal.4th at p. 1108, fn.4 [court may grant leave to amend to comply with former rule 31(d)]; *People v. Phillips* (1994) 25 Cal.App.4th 62, 67 fn.3. [leave to amend granted]; *People v. Peel*

(1993) 17 Cal.App.4th 594, 596, fn.2 [same]. Accord, *People v. Ribero* (1971) 4 Cal.3d 55, 65 [the power to grant relief from default in filing Notice of Appeal is to be liberally applied].)

**CONCLUSION**

Accordingly, appellant respectfully requests the court permit filing the attached amended Notice of Appeal.

DATED: \_\_\_\_\_

Respectfully submitted,

By: \_\_\_\_\_  
[Attorney's signature]  
Attorney for Appellant