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Attorney for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION [NUMBER]

THE PEOPLE OF THE STATE OF CALIFORNIA,		**A######**
Plaintiff and Respondent,		([County] County Superior Court No. ##########)
v.		
[CLIENT NAME],		
Defendant and Appellant.		

**APPLICATION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF**

To the Honorable Presiding Justice and Associate Justices of the California Court of Appeal, First Appellate District, Division [Number]:

Pursuant to California Rules of Court, rules 8.360(a) and 8.200(a)(4),[*] appellant [Client Name], through counsel, requests leave to file the attached supplemental [opening/reply/letter] brief.

Briefly explain reasons for filing the application. For example:

Appellate counsel makes this application in order to address newly-enacted legislation that was signed into law following the filing of the opening brief [or following completion of briefing].

This application is brought to protect appellant's state and federal constitutional rights to due process and effective assistance of counsel on appeal (art. I, § 15; U.S. Const., 6th & 14th Amends). (*In re Banks* (1971) 4 Cal.3d 337; *In re Smith* (1970) 3 Cal.3d 192 [reversal for ineffective assistance of appellate counsel].) It is based on the attached declaration of counsel.

Dated: [Month Day, Year]   Respectfully submitted,

                                          /s/ Attorney Name
                                          [ATTORNEY NAME]
                                          Attorney for Appellant

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[*] [**Practice Note:** Under rule 8.412(a), rule 8.200 governs the briefs that may be filed in juvenile delinquency and dependency appeals. Similarly, rules 8.200 and 8.360 apply to briefs filed in LPS conservatorship appeals (rule 8.480(a)) and civil commitment appeals (rule 8.483(a)).]

DECLARATION OF [ATTORNEY'S NAME]

1.   On [Date], I was appointed to represent appellant [Client Name] on appeal.

2.   On [Date], appellant was found guilty of one felony violation of mayhem (Pen. Code, § 203) and one felony violation of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). Appellant was sentenced to four years in state prison, the middle term for mayhem. The trial court stayed punishment on the assault conviction pursuant to Penal Code section 654. (RT 3006; CT 126-127, 131.)

3.   On [Date], I filed appellant's opening brief. [explain other briefing, if any].

4.   On October 1, 2021, the Governor signed Assembly Bill 518, which amended Penal Code section 654 to give the trial court discretion to choose the appropriate statutory provision under which to sentence a defendant where the defendant was convicted of multiple offenses based on a single act or course of conduct.

5.   Under the version of section 654 in effect at the time of appellant's sentencing, the trial court was required to sentence him under the provision that provided for the longest potential term of imprisonment. The trial court was thus required to sentence appellant under the provision for mayhem rather than assault with a deadly weapon. (See Pen. Code, §§ 204, 245, subd. (a)(1).)

6. Based on my review of the record, it appears the amendments to section 654 are retroactively applicable to appellant's case under *In re Estrada* (1965) 63 Cal.2d 740, and that the matter must be remanded for resentencing to allow the trial court to exercise its newly-authorized discretion.

7. Under the Sixth and Fourteenth Amendments to the United States Constitution and section 15 of article I of the California Constitution, appellant has rights to due process and effective assistance of counsel on appeal. (See, e.g., *Anders v. California* (1967) 386 U.S. 738, 739–745.) It is my professional opinion that the new argument raised in the accompanying supplemental opening brief is necessary to afford appellant effective assistance of counsel on appeal.

8. To ensure that appellant's rights are not violated and that appellate counsel properly raises before this Court all arguable issues, I respectfully I request this Court allow appellant to file the attached supplemental brief to address this newly-presented issue.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at [City, State] on [Date].

/s/[Attorney Name]

[Attorney Name]