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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,**

Plaintiff and Respondent,

v.

[CLIENT NAME],

Defendant and Appellant.

A#####

([County] County
Superior Court
No. #####)

MOTION FOR JUDICIAL NOTICE

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, rule 8.252, First
District Local Rule 6, and Evidence Code sections 452 and 459,
appellant [Client Name], through [his/her/their] appointed
appellate counsel, requests this Court take judicial notice of

[briefly describe materials]. This motion is based on the following points and authorities [and supporting declaration of counsel]¹.

Dated: [Month Day, Year]

Respectfully submitted,

/s/ Attorney Name
[ATTORNEY NAME]

Attorney for Appellant

¹ Practice note: While a declaration of counsel is not always required to support a Motion for Judicial Notice, one may be necessary to explain the origin of the document if it is not a court record or other official record (for example, a Google Maps printout).

[STATEMENT OF THE CASE IF NECESSARY]

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code section 459 permits an appellate court to take judicial notice of any matter specified in Evidence Code section 452. (Evid. Code, § 459, subd. (a).) Evidence Code section 452 provides that judicial notice may be taken of certain types of official acts and records, as well as “[f]acts and propositions that are of [] common knowledge” or “are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452.)

A motion for judicial notice by a reviewing court must comply with California Rules of Court, rule 8.252 and state:

- (A) Why the matter to be noticed is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
- (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
- (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(Cal. Rules of Court, rule 8.252(a)(2).) If the matter to be noticed is not in the record, the requesting party must attach a copy to

the motion or explain why it cannot be attached. (Cal. Rules of Court, rule 8.252(a)(3).)

[Describe the materials that are the subject of the motion, and explain why they are proper subjects of judicial notice. The following paragraphs are provided as an example only.]

[This Court may properly take judicial notice of any record of a California court. (Evid. Code, § 452, subd. (d).) This includes records in a related appeal and a court's own records. (*Stephenson v. Drever* (1997) 16 Cal.4th 1167, 1170, fn. 1 [records in a related appeal]; *People v. Cavanna* (1989) 214 Cal.App.3d 1054, 1058.)

Appellant asks this Court to take judicial notice of the record on appeal and this Court's decision in his prior appeal, *People v. Joe Smith*, A#####. The records from appellant's prior appeal are highly relevant to the instant case because appellant's current appeal involves a resentencing order. The record on appeal and opinion in A##### contain relevant information regarding appellant's original sentence and the underlying facts of the case. Appellant must refer to these materials in his opening brief to support his claim that the trial court did not understand the scope of its discretion to consider all aspects of appellant's sentence when it resentenced him. (See AOB ##.)

The record on appeal and opinion in A##### do not relate to proceedings occurring after judgment. (Cal. Rules of Court, rule 8.252(a)(2)(D).) The opinion in A##### was before the trial

court when appellant was resentenced, but judicial notice of the opinion and record on appeal was not taken by the trial court. (Cal. Rules of Court, rule 8.252(a)(2)(B), (C).)]

CONCLUSION

For the reasons set forth above, this Court should grant appellant's motion for judicial notice of [briefly describe materials].

Dated: [Month Day, Year]

Respectfully submitted,

/s/ Attorney Name
[ATTORNEY NAME]

Attorney for Appellant

[PROPOSED] ORDER

Appellant's motion asking that this Court take judicial notice of [briefly describe documents] is hereby:

_____ GRANTED _____ DENIED

PRESIDING JUDGE