

1 [Counsel]
2 [Address]
3 [Phone]
4 [State Bar Number]
5 Attorney for Defendant
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ____

10 THE PEOPLE OF THE STATE)
11 OF CALIFORNIA,)
12 Plaintiff,) Case No. ____
13 v.)
14) MOTION TO CORRECT
15 _____,) PRE-SENTENCE
16 Defendant.) CREDITS

17 TO: THE HONORABLE ____, JUDGE OF THE SUPERIOR COURT,
18 ____, DISTRICT ATTORNEY, AND ____, DEPUTY DISTRICT
19 ATTORNEY

20 On [date], this court sentenced defendant to a [length] term in state prison.
21 At the time of sentencing, this court determined his/her pre-sentence credits to be
22 ____ days of actual custody and ____ days of conduct credit, for a total of ____ days.
23 (See Transcript of Sentencing and Abstract of Judgment attached hereto as
24 Exhibits A and B.) The conduct credits awarded by this court were determined
25 using the formula dictated by Penal Code section 4019 as it existed at the time of
26 sentencing, which provided for six days of credit for every four days of actual
27 custody. (See *In re Marquez* (2003) 30 Cal.4th 14, 25-26.)
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1 However, section 4019, which dictates the award of local custody credit for
2 “good time” and “work time,” has since been amended to grant two days of
3 conduct credit for each two days of actual custody, except for certain classes of
4 offenders not applicable here. (Senate Bill No. 18, 2009-2010 3d Extra. Sess., sec.
5 50.) As discussed in part I of the points and authorities, the changes became
6 effective January 25, 2010. Section 4019 now provides, in relevant part, as
7 follows:

8 (a)(1) Except as provided in Section 2933.1 and paragraph (2),
9 subject to the provisions of subdivision (d), for each four-day period
10 in which a prisoner is confined in or committed to a facility as
11 specified in this section, one day shall be deducted from his or her
12 period of confinement unless it appears by the record that the
13 prisoner has refused to satisfactorily perform labor as assigned by the
14 sheriff. . . . (c)(1) Except as provided in Section 2933.1 and
15 paragraph (2), for each four-day period in which a prisoner is
16 confined in or committed to a facility as specified in this section, one
17 day shall be deducted from his or her period of confinement unless it
18 appears by the record that the prisoner has not satisfactorily complied
19 with the reasonable rules and regulations established by the
20 sheriff. . . . (f) It is the intent of the Legislature that if all days are
21 earned under this section, a term of four days will be deemed to have
22 been served for every two days spent in actual custody. . . .

23 As discussed in the attached points and authorities, under existing case law
24 the amendment must apply to all cases not yet final on January 25, 2010, including
25 defendant’s. (*In re Estrada* (1965) 63 Cal.2d 740, 744-745.) For the purpose of
26 determining whether a defendant may take advantage of a beneficial change in the
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1 law, a judgment is considered final at “that point at which the courts can no longer
2 provide a remedy to a defendant on direct review.” (*In re Spencer* (1965) 63
3 Cal.2d 400, 405.) Defendant’s case was not yet final on the effective date of the
4 statutory amendment because the 60-day period to file a notice of appeal under
5 California Rules of Court, rule 8.308 had not expired.

6 As also discussed in the points and authorities, a motion in the trial court is
7 the proper remedy for correction of credits. (Pen. Code, § 1237.1; *People v.*
8 *Clavel* (2002) 103 Cal.App.4th 516, 518-519.)

9 Defendant therefore requests that this court correct the credits calculation
10 and direct preparation of an amended abstract of judgment reflecting ___ days’
11 actual credits and ___ days’ conduct credits [credits should be equal except in odd
12 amount, subtract one], for ___ days’ total credits in this case. It is further
13 requested that this court order that copies of the amended abstract be sent to the
14 Department of Corrections and Rehabilitation and counsel herein, namely the
15 District Attorney and [defense counsel’s name].

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Dated: ____, 2010

Respectfully submitted,

Attorney for Defendant

1 **POINTS AND AUTHORITIES**

2 **I**

3 **Defendant Is Entitled to Additional Conduct Credits Against His**
4 **State Prison Sentence Under the Amendment to Penal Code Section 4019**

5 Penal Code section 2900.5, subdivision (a) provides that defendants shall
6 receive credit for all time in actual custody. (*In re Marquez* (2003) 30 Cal.4th 14,
7 19.) Penal Code section 4019 provides that defendants shall receive additional
8 credits as conduct credits. (*Id.* at pp. 25-26; *In re Jackson* (1986) 182 Cal.App.3d
9 439, 443-446.)

10 Section 4019 was amended last year in response to the serious
11 overcrowding and budgetary problems afflicting the Department of Corrections
12 and Rehabilitation, and now provides that, except for certain enumerated offenses
13 not applicable here, defendants are entitled to conduct credits equal to the credit
14 for actual custody time. (Senate Bill No. 18, 2009-2010 3d Extra. Sess., sec. 50.)

15 This amendment became effective January 25, 2010. (Cal. Const., art. IV, §
16 8(c) & (d) [laws enacted at extraordinary session become effective 90 days after
17 session is adjourned].)

18 This ameliorative legislation must be applied to cases, such as defendant's,
19 not yet final on January 25, 2010. As observed by the Supreme Court in *In re*
20 *Estrada* (1965) 63 Cal.2d 740, 744-745: "The key date is the date of final
21 judgment. If the amendatory statute lessening punishment becomes effective prior
22 to the date the judgment of conviction becomes final then, in our opinion, it, and
23 not the old statute in effect when the prohibited act was committed, applies. . . .
24 When the Legislature amends a statute so as to lessen the punishment it has
25 obviously expressly determined that its former penalty was too severe and that a
26 lighter punishment is proper as punishment for the commission of the prohibited

1 act. It is an inevitable inference that the Legislature must have intended that the
2 new statute imposing the new lighter penalty now deemed to be sufficient should
3 apply to every case to which it constitutionally could apply. The amendatory act
4 imposing the lighter punishment can be applied constitutionally to acts committed
5 before its passage provided the judgment convicting the defendant of the act is not
6 final.”

7 In *People v. Hunter* (1977) 68 Cal.App.3d 389, the Court of Appeal applied
8 the reasoning of *Estrada* to a credit issue very similar to the one posed by the
9 amendment to section 4019. Before 1975, defendants were not entitled to pre-
10 sentence custody (“backtime”) credit against sentences imposed as a condition of
11 probation. (*Id* at p. 391.) In 1976, Penal Code section 2900.5 was amended to
12 allow such a credit. (*Id.* at p. 392.) The court in *Hunter* concluded that the
13 amendment applied to custody time imposed as a condition of probation for cases
14 not yet final as of the effective date of the amendment. (*Id.* at p. 393.) Similar
15 reasoning was used to determine that such conduct credit was earned on sentences
16 imposed prior to the imposition of a state prison sentence in *People v. Doganiere*
17 (1978) 86 Cal.App.3d 237, 240.

18 Under these authorities, defendant is entitled to the application of the
19 amended provisions of Penal Code section 4019 in his case.

20 II

21 A Motion in the Trial Court Is the Proper Remedy 22 To Correct Sentence Credits

23 Penal Code section 1237.1 requires that an incorrect calculation of pre-
24 sentence credits must be brought to the attention of the trial court by motion, rather
25 than be raised on appeal. (See *People v. Clavel* (2002) 103 Cal.App.4th 516, 518-
26 519.) An unauthorized sentence may be corrected at any time. (*Ibid.*; *People v.*

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1 *Scott* (1994) 9 Cal.4th 331, 354.) An award of incorrect credits renders a sentence
2 unlawful and in excess of the court’s jurisdiction. (*People v. Jack* (1989) 213
3 Cal.App.3d 913, 916-918; see *People v. Serrato* (1973) 9 Cal.3d 753, 763.) The
4 trial court has jurisdiction to correct credits while the case is pending on appeal.
5 (*People v. Acosta* (1996) 48 Cal.App.4th 411, 428, fn. 8.)

6 For these reasons this court is the proper forum for correction of
7 defendant’s Penal Code section 4019 credits to reflect the amendments enacted by
8 SBx3 18.

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11 Dated: ____, 2010

Respectfully submitted,

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14 Attorney for Defendant

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EXHIBIT A

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EXHIBIT B