

Parts in blue print are instructions to user, not to be included in filed document unless so noted. [Parts and references in green font, if any, refer to juvenile proceedings. See Practice Note, this web page, for guidance in adapting forms to juvenile cases.]

Practice tip: Recall of the remittitur is discussed in chapter 7 of the [ADI Manual](#) in § 7.45.

[Attorney's name, bar number]
[Address and telephone number]
[Email address and fax number if available]
Attorney for Defendant *[name]*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION *[NUMBER]*

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

[Defendant's name],
Defendant and Appellant.

Court of Appeal
No. *[number]*

Superior Court
No. *[number]*

APPEAL FROM THE SUPERIOR COURT OF *[NAME]* COUNTY

Honorable *[Name]*, Judge

**DEFENDANT'S MOTION TO RECALL THE REMITTITUR
AND REINSTATE THE APPEAL**

TO THE HONORABLE *[NAME]*, PRESIDING JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION *[NUMBER]*:

Under California Rules of Court, rules 8.272(c) and [8.366(a) / 8.470], defendant *[name]* hereby moves to recall the remittitur the court issued on *[date]* and to reinstate his appeal. The grounds for this motion are that, after the issuance of the remittitur, *[reasons for need to recall]*.

This motion is based upon the California and United States Constitutions, rules 8.272(c)(2) and [8.366(a) / 8.470] of the California Rules of Court, the accompanying memorandum of points and authorities, the attached exhibits, and the files and records in Fourth Appellate District case number *[number]*.

Dated: *[Date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

MEMORANDUM OF POINTS AND AUTHORITIES

I. **BACKGROUND**

[Provide procedural and factual background necessary to understand motion.]

II. **THIS COURT SHOULD RECALL THE REMITTITUR AND REINSTATE THE APPEAL BECAUSE *[BRIEF STATEMENT OF GROUNDS FOR RECALL]*.**

Rule 8.272(c)(2) of the California Rules of Court provides: “On a party’s or its own motion or on stipulation, and for good cause, the court may stay a remittitur’s issuance for a reasonable period or order its recall.” (See also rule [8.366 / 8.470].)

Long-established case law provides for a remittitur to be recalled and an appeal to be reinstated when intervening new law requiring a different result has been issued or similar circumstances undermining the original decision are discovered. (E.g., *People v. Mutch* (1971) 4 Cal.3d 389, 396-397 [recall of remittitur ordered after California Supreme Court reinterpreted statute in subsequent decision]; *In re Grunau* (2008) 169 Cal.App.4th 997, 1002-1003 [recall of remittitur based on ineffective assistance of counsel]; *People v. Valenzuela* (1985) 175 Cal.App.3d 381, 388 [recall of remittitur because of ineffective assistance of counsel on appeal], disapproved on other grounds in *People v. Flood* (1998) 18 Cal.4th 470.)

In this case, the judgment on appeal has been undermined. *[Describe developments since judgment and explain why those make the judgment indefensible. Provide authorities specific to the reason for recall being invoked.]*

For these reasons, good cause exists to recall the remittitur and reinstate defendant's appeal.

III. CONCLUSION

Defendant requests the recall of the remittitur and reinstatement of [his/her] appeal.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

PROOF OF SERVICE