

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: The settled statement process is discussed in chapter 3 of the [ADI Appellate Practice Manual](#) at § 3.30. The section describes the process for filing in superior court and the alternative route available in the Court of Appeal. See the ADI website [Fourth District Practice](#) page for Division-specific preferences.

[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,

vs.

[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 REQUEST TO AUGMENT AND SETTLE THE
RECORD AND APPLICATION FOR EXTENSION OF TIME IN
WHICH TO FILE THE APPELLANT'S OPENING BRIEF**

Defendant *[name]* requests this court order the Honorable *[name]* of the *[name]* County Superior Court to settle the record and then to augment the record on appeal to include the settled record. (Cal. Rules of Court, rules 8.137, 8.155, 8.340, 8.346 *[, 8.407(d), 8.410]*.) Defendant also requests this court order a date for completion of the settlement.

[Describe generally record sought, relevance to appeal, including identifying the relevant issues and reason for unavailability].

Defendant requests that this court order Honorable *[name]* and the parties *[names of the attorneys]*, who were present in the proceedings below for which settlement is being sought, to confer in open court to settle the record. Counsel for all parties should be ordered to check their notes and participate in the preparation of the settled statement with the trial court.

The settled statement should include the following proceedings:

[Describe with specificity what is needed and make a list of the proceedings to be included in the settled record, including dates and other details necessary to identify proceedings.]

POINTS AND AUTHORITIES

The California Supreme Court recognizes the “critical role of a proper and complete record in facilitating meaningful appellate review.” (*People v. Hawthorne*

(1992) 4 Cal.4th 43, 63.) A complete and accurate record is an essential component of appellate review and due process and is a requirement for the effective assistance of appellate counsel. (*People v. Barton* (1978) 21 Cal.3d 513, 518-520.)

The destruction or loss of a material portion of the record may constitute a denial of meaningful appellate review and require reversal. (*People v. Moore* (1988) 201 Cal.App.3d 51, 56.) To prevail on a claim that a missing material portion of the record requires reversal, defendant must show that the record is inadequate to permit meaningful appellate review and that an adequate substitute for the record cannot be obtained. (*People v. Galland* (2008) 45 Cal.4th 354, 370; *People v. Harris* (2008) 43 Cal.4th 1269, 1280.) Based on appellate counsel's review of the record, legal research, and discussions with trial counsel, appellate counsel has determined the material requested above is relevant to effectively represent defendant and for a proper determination of this appeal. Counsel believes the settled statement of the proceedings constitutes an important part of the record on appeal and is directly relevant to the issues on appeal.

It will not be possible to file an opening brief without an extension of time of *[number]* days from the filing of the augmented record. Defendant therefore respectfully requests the filing deadline for the opening brief be extended by *[number]* days from the date of the filing of the augmented record.

I declare under penalty of perjury pursuant to the laws of California that the foregoing is true and correct.

Dated: *[date]*

Respectfully submitted,

[Attorney's signature]

[Attorney's name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

PROOF OF SERVICE