|  |
| --- |
| 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 TIPS***  See [ADI Manual](http://www.adi-sandiego.com/panel/manual.asp), chapter 7, sections 7.4.4.2, 7.6.4.4, chapter 8, 8.4.6; [ADI’s Motion Practice Guide](http://www.adi-sandiego.com/practice/pract_articles.asp), section II.D.7. |

*[Attorney’s name, bar number*

*Address and telephone number*

*Email address and fax number if available]*

Attorney for Defendant and Appellant *[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.  *[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] [rule or rules], 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], 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

and Appellant *[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) 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, 484, 490, fn. 12.)

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 the appeal.

Dated: *[date]* Respectfully submitted,

*[Attorney’s name]*

State Bar No. *[number]*

Attorney for Defendant

and Appellant *[name]*

**PROOF OF SERVICE**