



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: November 16–17, 2017

Title

Rules and Forms: Miscellaneous Technical Changes

Agenda Item Type

Action Required

Effective Date

January 1, 2018

Date of Report

October 19, 2017

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 3.2300 and 10.855; revoke form REC-033; revise form MC-200; renumber forms MC-245 and MC-246 as CR-187 and CR-188 respectively

Contact

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Recommended by

Judicial Council staff
Susan R. McMullan, Attorney
Legal Services

Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective January 1, 2018:

1. Amend rule 3.2300 of the California Rules of Court to conform to new law. Assembly Bill 90 (Weber), signed by the Governor on October 12, 2017, and effective January 1, 2018, amends Penal Code sections 186.34 and 186.35, which set out procedures for requesting the removal of an individual's name from a shared gang database, and for petitioning the court to review a law enforcement agency's denial of such a request.

Among other things, the amendments provide that a law enforcement agency's failure to respond to a written request for removal may be considered a "deemed denial" and be subject to court review just as a written denial is. The proposed amendments to rule 3.200 reflect this change in the law. The rule's cross-references to the statute and statutory text quoted in the Advisory Committee Comment have also been amended to reflect the amended statutes. The Judicial Council form used in conjunction with these rules also needs to be changed, but the changes are more extensive than may appropriately be done as technical changes.

2. Amend rule 10.855 to strike subdivision (j) entirely and reletter subdivision (k) as (j) and revoke form REC-003, *Report to The Judicial Council: Superior Court Records Destroyed, Preserved, and Transferred*, to conform to recent changes to statute. Assembly Bill 1443 (Levine), effective January 1, 2018, deletes the following sentence from Government Code section 68153(b): "A list of the court records destroyed within the jurisdiction of the superior court shall be provided to the Judicial Council in accordance with the California Rules of Court." The proposed amendment would delete subdivision (j) of rule 10.855, which details the reporting requirement that has been eliminated by statute and revoke the form used to make the report.
3. Revise *Claim Opposing Forfeiture* (form MC-200) to comply with recent changes to statute addressing when a claim must be made. Specifically, in the Notice box, item 1 is revised so the last lines read "your claim within 30 days after the last time notice is ~~first~~ published in a newspaper." The underlined text has been added, and the stricken text deleted. The same change has been made to the Spanish version of the notice.
4. Renumber forms MC-245, *Motion to Vacate Conviction or Sentence*, and MC-246, *Order on Motion to Vacate Conviction or Sentence*, which are two new optional forms, effective January 1, 2018. These forms are designed to assist self-represented individuals and the courts in implementing recent legislation that permits criminally convicted individuals no longer in custody to file a motion to vacate a conviction or sentence, and withdraw the plea of guilty or nolo contendere based on prejudicial errors related to immigration consequences or newly discovered evidence of actual innocence.

These forms were originally designated as "Miscellaneous" forms, with "MC" preceding the form numbers, but it is more appropriate for them to be designated as "Criminal" forms, with "CR" preceding the form numbers because they address postconviction relief for criminally convicted individuals. In this way, the new forms are similar to forms CR-180, CR-181, CR-183, CR-184, CR-185, and CR-186, all of which address postconviction relief or relief following arrest. It is especially appropriate to include these forms as "Criminal" forms because it is anticipated that self-represented individuals are likely to be the most common users of these forms, and it would be intuitive for those individuals, who are interested in obtaining postconviction relief, to look for the forms to

accomplish that request in the “Criminal” section. For these reasons, form MC-245 should be renumbered as CR-187 and form MC-246 should be renumbered as CR-188.

Copies of the revised rules and forms are attached at pages 4–16.

Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Rationale for Recommendation

The changes to these rules and forms are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Implementation Requirements, Costs, and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rules 3.2300 and 10.855, at pages 4–7
2. Forms REC-003, MC-200, CR-187, and CR-188, at pages 8–16

Rules 3.2300 and 10.855 of the California Rules of Court are amended, effective January 1, 2018, to read:

1 **Rule 3.2300. Review under Penal Code section 186.35 of law enforcement agency denial of**
2 **request to remove name from shared gang database**

3
4 (a) * * *

5
6 (b) **Definitions**

7 For purposes of this rule:

8
9
10 (1) “Request for review” or “petition” means a ~~“notice of appeal”~~ petition under Penal
11 Code section 186.35 requesting review of a law enforcement agency’s ~~decision~~
12 ~~denying denial~~ of a person’s request under Penal Code section 186.34 to remove a
13 person’s name from a shared gang database.

14
15 (2) “Law enforcement agency” means the local law enforcement agency that denied the
16 request under Penal Code section 186.34 to remove a person’s name from a shared
17 gang database.

18
19 (c) * * *

20
21 (d) **Petition**

22
23 (1) *Form*

24
25 (A) * * *

26
27 (B) The person seeking review must attach to the petition under (A) the law
28 enforcement agency’s written verification, if one was received, of its decision
29 denying the person’s request under Penal Code section 186.34 to remove his
30 or her name—or, if the request was filed by a parent or guardian on behalf of
31 a child under 18, the name of the child—from the shared gang database.

32
33 (2) *Time for filing*

34
35 The petition must be filed within ~~90 calendar days of the date the law enforcement~~
36 ~~agency mails or personally serves the person filing the petition with written~~
37 ~~verification of the agency’s decision denying that person’s request under Penal Code~~
38 ~~section 186.34 to remove the name from the shared gang database.~~ the time frame
39 specified in Penal Code section 186.35(b).

40
41 (3)–(5) * * *

42
43 (e) **Record**

44
45 (1) *Filing* * * *

1
2 (2) *Contents*
3

4 The record is limited to the documents required by Penal Code section 186.35~~(b)~~(c).
5

6 (3)–(4) * * *
7

8 **(f) Written argument**
9

10 (1) *Contents*
11

12 (A) The person filing the petition may include in the petition or separately serve and
13 file a written argument about why, based on the record specified in Penal Code
14 section 186.35~~(b)~~(c), the law enforcement agency has failed to establish by clear
15 and convincing evidence the active gang membership, associate status, or
16 affiliate status of the person so designated or to be so designated by the law
17 enforcement agency in the shared gang database.
18

19 (B) The law enforcement agency may serve and file a written argument about why,
20 based on the record specified in Penal Code section 186.35~~(b)~~(c), it has
21 established by clear and convincing evidence the active gang membership,
22 associate status, or affiliate status of the person.
23

24 (C)–(D) * * *
25

26 (2)–(3) * * *
27

28 **(g)–(i) * * ***
29

30 **Advisory Committee Comment**
31

32 **Subdivision (d)(1)(B).** Penal Code section 186.34~~(f)~~(e) provides that if a person to be designated as a
33 suspected gang member, associate, or affiliate, or his or her parent or guardian, submits written
34 documentation to the local law enforcement agency contesting the designation, the local law enforcement
35 agency “shall provide the person and his or her parent or guardian with written verification of the
36 agency’s decision within 30 days of submission of the written documentation contesting the designation.
37 If the law enforcement agency denies the request for removal, the notice of its determination shall state
38 the reason for the denial. If the law enforcement agency does not provide a verification of the agency’s
39 decision within the required 30-day period, the request to remove the person from the gang database shall
40 be deemed denied.”
41

42 **Subdivision (e)(2).** Penal Code section 186.35~~(b)~~(c) provides that the evidentiary record for this review
43 proceeding “shall be limited to the agency’s statement of basis of its designation made pursuant to
44 subdivision ~~(e)~~ (c) or (d) of Section 186.34, and the documentation provided to the agency by the
45 appellant person contesting the decision pursuant to subdivision ~~(f)~~ (e) of Section 186.34.”
46

47 Penal Code section 186.34~~(e)(1)~~(d)(1) provides that “[a] person, or, if the person is under 18 years of age,
48 his or her parent or guardian, or an attorney working on behalf of the person may request information of

1 any law enforcement agency as to whether the person is designated as a suspected gang member,
2 associate, or affiliate in a shared gang database” and, if the person is so designated, “information as to the
3 basis for the designation for the purpose of contesting the designation as described in subdivision ~~(f)~~ (e).”
4 Section 186.35~~(e)~~(d)(2) provides that “[t]he law enforcement agency shall provide information requested
5 under paragraph (1), unless doing so would compromise an active criminal investigation or compromise
6 the health or safety of the person if the person is under 18 years of age.”

7
8 Penal Code section 186.34~~(f)~~(e) provides that “the person to be designated as a suspected gang member,
9 associate, or affiliate, or his or her parent or guardian, may submit written documentation to the local law
10 enforcement agency contesting the designation.”

11
12 Penal Code section 186.34~~(g)~~(f) also provides that “[n]othing in this section shall require a local law
13 enforcement agency to disclose any information protected under Section 1040 or 1041 of the Evidence
14 Code or Section 6254 of the Government Code.”

15 16 **Rule 10.855. Superior court records sampling program**

17
18 **(a)–(i) * * ***

19 20 ~~(j)~~ **Reporting requirement**

21
22 ~~Each superior court must submit semiannually to the Judicial Council a *Report to the*~~
23 ~~*Judicial Council: Superior Court Records Destroyed, Preserved, and Transferred* (form~~
24 ~~REC-003), including the following information:~~

25
26 ~~(1) A list by year of filing of the court records destroyed;~~

27
28 ~~(2) A list by year of filing and location of the court records of the comprehensive and~~
29 ~~sample court records preserved; and~~

30
31 ~~(3) A list by year of filing and location of the court records transferred to entities under~~
32 ~~rule 10.856.~~

33 34 ~~(k)~~ **(j) Application**

35
36 The sampling program provided in this rule, as amended effective July 1, 2016, applies
37 retroactively to all superior courts.

38 39 **Advisory Committee Comment**

40
41 **Subdivision (c)(4).** Capital cases are excluded under subdivision (c)(4) because these cases have an
42 automatic right of appeal to the California Supreme Court, and trial court records are retained
43 permanently under Government Code section 68152(c)(1) if the defendant is sentenced to death. Each
44 year, the Judicial Council will make available to the superior courts a list of all noncapital cases in which
45 the California Supreme Court has issued a written opinion.

1 **Subdivision ~~(e)~~(j).** Because the destruction of court records is discretionary, all courts may elect to apply
2 the rule retroactively and destroy court records that are not required to be preserved under subdivisions
3 (c), (d), and (f), but they are not required to do so.
4

5 Superior courts that destroyed court records under the prior sampling rule may have preserved only 10
6 percent of their records (formerly known as the “systematic sample”) for the year that they are now
7 assigned to preserve the sample defined in subdivision (f). Except for the Superior Court of Los Angeles
8 County, these courts would not be able to meet the requirement in subdivision (f)(1). So long as these
9 courts continue preserving the 10-percent sample for their assigned year, they will be deemed to have
10 satisfied subdivision (f)(1).
11
12

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

DEPARTMENT AND DIVISION:
 JUDICIAL DISTRICT OR BRANCH COURT:
 MAILING ADDRESS:
 STREET ADDRESS:
 CITY AND ZIP CODE:
 TELEPHONE:
 FAX:

**REPORT TO THE JUDICIAL COUNCIL:
 SUPERIOR COURT RECORDS DESTROYED, PRESERVED, AND TRANSFERRED**

1. You are hereby notified, as required by rule 10.855 of the California Rules of Court, that the following superior court records were (*check only one category per report*):

- a. Destroyed by court order (*date of order*):
 and preserved in another medium (*specify*):
- b. Preserved for the comprehensive or sample court records (*specify the location of the records below, if different from the court address above*).
- c. Transferred to an entity under rule 10.856 (*specify location of the records below if different from the organization's address*). **Attach a copy of Judicial Council Form REC-002(R).**

| Record Type | Beginning and Ending Case Numbers | Beginning and Ending Month and Year | Medium |
|-------------|--------------------------------------|--|--------|
|-------------|--------------------------------------|--|--------|

2.
 Paper
 Microfilm
 Electronic
 Other (*specify*):

Location:

3.
 Paper
 Microfilm
 Electronic
 Other (*specify*):

Location:

4.
 Paper
 Microfilm
 Electronic
 Other (*specify*):

Location:

Date: _____ Clerk, by _____, Deputy

(If necessary, use the reverse of this page to continue)

| Record Type | Beginning and Ending Case Numbers | Beginning and Ending Month and Year | Medium |
|-------------|-----------------------------------|-------------------------------------|---|
| 5. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |
| 6. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |
| 7. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |
| 8. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |
| 9. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |
| 10. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |
| 11. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |
| 12. | | | <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Electronic <input type="checkbox"/> Other (<i>specify</i>): |
| Location: | | | |

REVOKED

| | |
|--|---------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| THE PEOPLE OF THE STATE OF CALIFORNIA | |
| CLAIMED PROPERTY: | |
| CLAIMANT (NAME): | |
| CLAIM OPPOSING FORFEITURE (Health & Saf. Code, § 11488.5) <input type="checkbox"/> In response to a judicial petition for forfeiture (use existing case No.) <input type="checkbox"/> In response to notice of administrative proceedings | CASE NUMBER: |

1. Claimant (name):
 is an individual corporation other (specify):
2. Claimed property (describe):
3. Value of claim is \$5,000 or less \$5,001 or more (Health & Saf. Code, § 11488.5(a)(3).)

| | |
|--|---|
| <p>NOTICE</p> <ol style="list-style-type: none"> 1. You must file your claim within 30 days after you receive personal or mailed notice that your property may be forfeited. If you do not receive personal or mailed notice, you must file your claim within 30 days after the last time notice is published in a newspaper. 2. Your claim must be filed in the county where the property was seized. If the property was not seized, file your claim in the county where the property is located. If you have received a notice, you can find the address of the court on that notice. 3. Within 30 days after filing your claim, serve a copy on the District Attorney or Attorney General. The copy must have the court clerk's filing stamp on it. <p><i>This notice is urgent. If you do not understand it, you must seek help.</i></p> | <p>AVISO</p> <ol style="list-style-type: none"> 1. Usted debe presentar su demanda dentro de los 30 días siguientes a la fecha en que recibe, personalmente o por correo, el aviso de que sus bienes pueden ser confiscados. Si no recibe dicho aviso, deberá presentar su reclamo dentro de los 30 días siguientes a la fecha en que el aviso se publica por última vez en un periódico. 2. Su demanda debe presentarse en el condado donde fueron confiscados los bienes. Si los bienes no han sido confiscados, presente su demanda en el condado donde están ubicados los bienes. Si ha recibido el aviso, busque la dirección de la corte en el aviso. 3. Dentro de los 30 días siguientes a la fecha en que presentó su demanda, envíe una copia de la notificación judicial a la oficina del Fiscal (District Attorney) o del Procurador General (Attorney General). La copia debe llevar el sello del actuario de la corte encargado de recibir las demandas. <p><i>Esta notificación es urgente. Si usted no la entiende, debe pedir ayuda.</i></p> |
|--|---|

| | |
|---------------------------------------|--------------|
| CLAIMANT (Name): CLAIMED PROPERTY: | CASE NUMBER: |
|---------------------------------------|--------------|

4. Claimant has an interest in the claimed property. Claimant
- a. is the owner. *For vehicles (cars, boats, planes, etc.) only:* registered owner legal owner
 - b. has a security interest or is a lien holder has a right to possess.
 - c. is the personal representative of the estate of the owner, lessee, or secured party.
 - d. other (*specify*):

5. Claimant's interest in the right to or value of the claimed property is
- a. all part (*specify nature, amount, or percentage*):

 - b. unknown.

6. **Claimant requests**
- a. that the claimed property not be ordered forfeited.
 - b. that claimant's interest in the claimed property not be ordered forfeited.
 - c. costs of suit.
 - d. other (*specify*):

7. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF CLAIMANT)

VERIFICATION

I am the claimant in this proceeding and have read this claim. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(SIGNATURE OF CLAIMANT)

| | | |
|---|----------------|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | STATE BAR NO.: | FOR COURT USE ONLY |
| PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH: | | CASE NUMBER: |
| MOTION TO VACATE CONVICTION OR SENTENCE (Pen. Code, §§ 1016.5, 1473.7) | | FOR COURT USE ONLY DATE: TIME: DEPARTMENT: |

Instructions — Read Carefully

- You must file a separate motion for each separate case number.
- This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).
- Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use *Attachment to Judicial Council Form* (form MC-025) as your additional page.
- Serve the motion on the prosecuting agency.
- **File the motion in the superior court in the county where the conviction or sentence was imposed.** Only the original motion needs to be filed unless local rules require additional copies.
- Notify the clerk of the court in writing if you change your address after filing your motion.

1. This motion concerns a conviction or sentence in the above case number. On (date) _____, I was convicted of a violation of the following offenses (*list all offenses included in the conviction*):

| CODE | SECTION | TYPE OF OFFENSE (<i>felony, misdemeanor, or infraction</i>) |
|------|---------|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

If you need more space for listing offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

2. **MOTION UNDER PENAL CODE SECTION 1016.5****GROUND FOR RELIEF: I am requesting relief based on the following:**

- a. Before my acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise me that the conviction might have immigration consequences as required under Penal Code section 1016.5(a).
- b. The conviction that was based on my plea of guilty or nolo contendere may result in immigration consequences for me, including possible deportation, exclusion from admission to the United States, or denial of naturalization.
- c. I likely would not have pleaded guilty or nolo contendere if the court had advised me of the immigration consequences of my plea. (*People v. Arriaga* (2014) 58 Cal.4th 950.)

• Supporting facts

Tell your story briefly. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences, (2) the possible immigration consequences, and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. (*If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) on any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.*)

3. **MOTION UNDER PENAL CODE SECTION 1473.7**

I am not currently imprisoned or restrained.

GROUND FOR RELIEF: I am requesting relief based on the following:

- a. The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged my ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

3. a. • Supporting facts

Tell your story briefly. Describe the facts you allege to be prejudicial error. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifying what your attorney did or failed to do and how that affected your plea. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) on any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

3. b. Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

I discovered the new evidence of actual innocence on (date):

• Supporting facts

Tell your story briefly. Describe the facts you allege to constitute newly discovered evidence of actual innocence. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) on any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

| | |
|---|--------------|
| PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: | CASE NUMBER: |
|---|--------------|

4. I am represented by counsel who will appear at the hearing. I request that the court hold the hearing on this motion without my personal presence for the following reasons:

5. I request that the court vacate the conviction or sentence in the above-captioned matter.

6. I request that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

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

Date:

(TYPE OR PRINT NAME)

 _____
(SIGNATURE OF MOVING PARTY OR ATTORNEY)

| | | |
|--|----------------|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>): | STATE BAR NO.: | FOR COURT USE ONLY |
| PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: | DATE OF BIRTH: | CASE NUMBER: |
| ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE (Pen. Code, §§ 1016.5, 1473.7) | | FOR COURT USE ONLY DATE: TIME: DEPARTMENT: |

1. **FOR PURPOSES OF PENAL CODE SECTION 1016.5 RELIEF, THE COURT**

grants denies the moving party's request to vacate the judgment and to permit the moving party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.

2. **FOR PURPOSES OF PENAL CODE SECTION 1473.7 RELIEF**

a. The court

grants denies the request that the court hold the hearing *without* the personal presence of the moving party but *with* the presence of counsel.

b. The moving party has established has not established the existence of grounds for relief, as specified below:

c. The court grants denies the moving party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error.

d. The court grants denies the moving party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence.

e. The court grants denies the moving party's request to withdraw the plea of guilty or nolo contendere.

Date:

(JUDICIAL OFFICER)