

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FOURTH APPELLATE DISTRICT**

DIVISION \_\_\_\_\_

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

vs.

Defendant and Appellant.

Court of Appeal  
No.

Superior Court  
No.

**APPEAL FROM THE SUPERIOR COURT OF**  
\_\_\_\_\_ **COUNTY**

Honorable \_\_\_\_\_, Judge

**APPELLANT'S MOTION TO CONSOLIDATE**  
**THE HABEAS PROCEEDING WITH THE APPEAL**

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Attorney for Defendant and  
Appellant

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**TO THE HONORABLE \_\_\_\_\_, PRESIDING  
JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF  
THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT,  
DIVISION \_\_\_\_\_:**

Appellant, \_\_\_\_\_, hereby moves for an order  
consolidating the direct appeal, case number \_\_\_\_\_, and the  
collateral habeas proceeding, which is being initiated by the

contemporaneous filing of a petition for writ of habeas corpus, case number \_\_\_\_\_ . The appellant's opening brief was filed on \_\_\_\_\_ . The basis for this motion is more particularly set forth in the accompanying memorandum of points and authorities and the declaration of appellant's appointed counsel, \_\_\_\_\_ (Exhibit A).

Dated:

Respectfully submitted,

Attorney for Appellant and Defendant

**MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF CONSOLIDATION**

**STATEMENT OF CASE AND FACTS SUPPORTING  
CONSOLIDATION**

(set forth relevant procedure and facts with citations to the record and to the declaration of appellate counsel)

**I.**

**THE REVIEWING COURT HAS INHERENT POWER  
AND BROAD DISCRETION TO CONSOLIDATE  
CAUSES INVOLVING COMMON ISSUES OF FACT OR  
LAW.**

There is no express California Rule of Court governing applications to consolidate appeals. However, California Rules of Court (hereafter “Rule(s)”), rule 8.147(b) of the refers to use of records from prior appeals on subsequent appeals in the same case and has been interpreted in a manner which promotes consolidation of appeals, unless it can be shown that a party would be prejudiced by consolidation. (*General Elec. Co. v. Fed. Etc., Distribution Co.* (1954) 122 Cal.App.2d 509, 511.)

Witkin is in agreement:

Where separate actions, related in subject matter and issues, are consolidated for trial (see 4 Cal. Proc. (5th), *Pleading*, §341), or where actions separately tried are nevertheless so related, they may often profitably be considered together on appeal. So far as the reviewing court is concerned, it may without order place them on the calendar together, make use of briefs and arguments

interchangeably, and write only one detailed opinion, deciding the other cases on the authority of the first. (See *infra*, §788.) An order of consolidation, however, goes further: it allows the parties to all the appeals to prepare a single record and set of briefs.

(9 Witkin, California Procedure (5th ed., 2008) Appeal, §765, p. 838.)

Under rule 8.50 (b) of the California Rules of Court, good cause must be shown. Certainly, judicial economy and public economy justify a conclusion all interests would be best served by an order consolidating the appeal and habeas in this action, where identical and related issues are presented in addition to new issues. As shown in the declaration of appellate counsel (Exhibit A), consolidation is appropriate because of the relationship of the issues raised in the appellant's opening brief and the petition for writ of habeas corpus.

## CONCLUSION

For the foregoing reasons, appellant requests that the opening brief and petition for writ of habeas corpus be consolidated for briefing and decision.

Dated:

Respectfully submitted,

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Attorney for Appellant and Defendant

## **DECLARATION OF COUNSEL**

ATTACH PROOF OF SERVICE