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Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

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|--|---|-----------------------------|
| THE PEOPLE OF THE STATE OF CALIFORNIA, |) | |
| |) | |
| Plaintiff, |) | Sup. Ct. Case Nos. 1234567, |
| |) | 123456789 |
| |) | |
| |) | Court of Appeal Case No. |
| |) | B265784 |
| v. |) | |
| |) | MOTION TO CORRECT |
| JOHN DOE. |) | SENTENCE: PENALTY |
| |) | ASSESSMENTS |
| Defendant. |) | |

TO: THE HONORABLE XXXXXX, JUDGE OF THE SUPERIOR COURT, AND TO XXXXXXXX, DISTRICT ATTORNEY, AND XXXXXXXX, DEPUTY DISTRICT ATTORNEY, AND TO XXXXXXXX, ATTORNEY AT LAW [DEFENDANT'S TRIAL ATTY]:

By this motion, defendant moves to correct the sentence imposed in this case, namely the requirement that defendant pay penalty assessments on the crime lab and drug program fees.

On March 15, 2016, defendant was sentenced in these two cases to a term of five years in jail, split between two years in custody and three on mandatory supervision. As part of the

sentences, the court imposed the \$50.00 lab fee and \$150.00 drug program fee, along with penalty assessments on each. (See Minute Orders attached hereto as Exhibit A.)

Recently the court of appeal in *People v. Watts* (2016) 2 Cal.App.5th 223, disagreeing with the earlier appellate court decisions in *People v. Martinez* (1998) 65 Cal.App.4th 1511 and *People v. Sierra* (1995) 37 Cal.App.4th 1690, ruled that penalty assessments do not apply to these fees. Defendant, relying on *Watts*, therefore asks this court to vacate these penalty assessments.

Defendant's cases are on appeal in case numbers B275367 and B275646. **Under Penal Code section 1237.2, defendant must seek correction of these fee assessments in this court.**

Therefore, defendant requests that this court correct his sentence by vacating the penalty assessments on these two fees.

Dated: October 26, 2016

Respectfully submitted,

SALLY Q. LAWYER

Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

Penalty assessments are not applicable to drug program and lab fees. (*People v. Watts* (2016) 2 Cal.App.5th 223; but see *People v. Martinez* (1998) 65 Cal.App.4th 1511 and *People v. Sierra* (1995) 37 Cal.App.4th 1690.)

Requests to correct fines, fees, etc., must be raised in the trial court by motion if the defendant's case is on appeal. (Pen. Code, 1237.2.)

Therefore, defendant requests that this court vacate the penalty assessments on the lab and drug program fees.

Dated: October 26, 2016

Respectfully submitted,

SALLY Q. LAWYER

Attorney for Defendant

EXHIBIT A