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Attorney for Appellant
Edgar Catarino

IN THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

EDGAR CATARINO,

Defendant and Appellant,

No. S271828

Fourth District
Court of Appeal
No. D078832

Santa Clara County
Superior Court
No. C1635441

Hon. Cynthia Sevely
Judge of the Superior Court

**REQUEST FOR THE COURT TO TAKE
JUDICIAL NOTICE**

TO THE HONORABLE PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

This court may take judicial notice of the the records of any court of this state. (Evid. Code, § 452, subd. (d).) Appellant asks this court to take judicial notice of the records of the First District Court of Appeal in *People v. Surial Diaz*, Case No. A153196.

The record *People v. Diaz*, is relevant to the instant case because in that case, as in the instant case:

- the appellant cited *People v. Alleyne* (2013) 570 U.S. 99, and argued that because subdivision (d) of Penal Code section 667.6 involves a finding of fact that increases the mandatory minimum term on subordinate counts of specified sex offenses, the Sixth Amendment requires that finding of fact to be made by a jury, not a judge (Case No. 153196, AOB 43-46; ARB 51);
- the appellant explicitly eshewed the argument that fact-finding related to the imposition of consecutive as opposed to concurrent sentences triggers the Sixth Amendment right to a jury trial (Case No. 153196, ARB 52);
- the court of appeal refused to address the argument that the appellant made, addressed the argument that the appellant had explicitly eshewed, and disposed of the appellant's Sixth Amendment claim by mischaracterizing it as an argument that facfinding related to the decision to run sentences consecutively implicates the Sixth Amendment right to a jury trial (Case No. 153196, Opinion of Court of Appeal (July 30, 2019), p. 8).

In his petition for review in the instant case, Appellant Catarino has argued that the refusal of the Fourth District Court of Appeal to address this

question is a telling sign that this is a question that must be addressed by this court. (PFR 7.) Appellant Catarino asks this court to take judicial notice of the records in *People v. Surial Diaz*, because the refusal of the First District Court of Appeal to address this question is another such sign that this question must be addressed by this court.

Dated: December 8, 2021

Respectfully submitted,

Ron Boyer

Attorney for Appellant
Edgar Catarino

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. CATARINO**

Case Number: **S271828**

Lower Court Case Number: **D078832**

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12/8/2021

Date

/s/Ron Boyer

Signature

Boyer, Ron (160513)

Last Name, First Name (PNum)

Ron Boyer, Attorney at Law

Law Firm