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Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No.
Plaintiff,	)	EXCLUDING EVIDENCE OF DEFENDANT'S CHARACTER FOR THE USE OF DRUGS OR ALCOHOL
vs.	)	
,	)	Date:
	)	Time:
Defendant.	)	Dept:

The defense moves for a protective order that:

1. The prosecution not ask any questions of any witnesses concerning defendant's drinking habits or prior narcotics usage.

2. Any questions asked by the prosecution concerning the consumption of alcoholic beverages or ingestion of narcotic substances be limited to the day[s] of the alleged act[s].

3. The prosecution instruct the prosecution witnesses not to volunteer information concerning defendant's drinking habits or use of narcotics.

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I

LAW

CHARACTER EVIDENCE

Character evidence is inadmissible to prove that the defendant acted in conformity with that character. Evidence Code §1101 provides:

"Except as provided in this section and in Sections 1102 and 1103, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence or reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specific occasion.

(b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the

victim consented) other than his or her disposition to commit such an act.

(c) Nothing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness."

II

GENERAL DRINKING HABITS ARE INADMISSIBLE TO IMPEACH WITNESS--ONLY EVIDENCE OF DRINKING ON THE DAY IN QUESTION ONLY IS ALLOWED.

In the case of **People vs. Stanley** (1962) 206 CA2d 795, 799 the court ruled that evidence of drinking habits was inadmissible to impeach a witness. The only admissible evidence would be whether the witness was drinking on the day in question.

"<u>The authorities establish that drunkenness on occasions prior and subsequent to the one involved in the case does not amount to competent impeachment evidence</u>."

"III Wigmore on Evidence (Third Ed.) section 933, pages 480-481: `Intoxication, if it is of such a degree as to deserve the name, involves a numbing of the faculties so as to affect the capacity to observe, to recollect, or to communicate; and is therefore admissible to impeach***But a general habit of intemperance tells us nothing of the witnesses testimonial incapacity except as it indicates actual intoxication at the time of the event observed or the time of testifying; and hence, since in its bearing upon moral character it does not involve the veracity-trait (ante, Sec. 923), it will usually not be admissible.' McCormick on Evidence, Sec. 45, page 98: 'One form of abnormality is that of being under the influence of drugs or drink. If the witness was under such influence at the time of the happenings which he reports in his testimony or is so at the time he testifies, this of course is provable, on cross or by extrinsic evidence, to impeach. Habitual addiction stands differently. Under a tradition arising perhaps when three-bottle men were more frequently encountered, it is generally held that the mere fact of chronic alcoholism is not provable on credibility." **People vs. Stanley** (1962) 206 CA2d 795, 797.

Thus when intemperance is not in issue it is improper to introduce evidence of habitual alcohol consumption of the witness or defendant. **Springer vs. Reimers** (1970) 4 CA3d 325, 84 Cal.Rptr. 486.

V

NARCOTIC USAGE INADMISSIBLE TO IMPEACH WITNESS--USE ON DAY IN QUESTION ONLY IS ALLOWED

Similarly, as to narcotics, their use remote in time from the offense at issue for impeachment purposes is not allowed. **People vs. Ashford** (1968) 265 Cal.App.2d 673, 679. This so is because such remote in time use is not relevant to establish that a witness's perception recordation, recollection or recall for the event in question was thereby affected, and a witness cannot be impeached by specific acts of misconduct other than a felony conviction. (**Id.**, at p. 679; **People vs. Buono** (1961) 191 Cal.App.2d 203, 229-233.)

In **People vs. Pargo** (1966) 241 Cal.App.2d 594, the defendant was accused of a robbery in November 1964. The prosecution introduced evidence of a medical examination for narcotics usage in February, 1964 and elicited testimony that the defendant was a registered narcotics offender as of May, 1965. He thus bracketed the period of the crime from which an

inference could be drawn that the defendant was using drugs at or near the time of the crime thereby impeaching his ability to recollect and perceive events of that time period. The defendant testified he remembered being elsewhere on the night of the crime.

The conviction in **Pargo** was reversed because of the lack of expert testimony of the effect upon testimonial capacity of, use or addiction to narcotics at a time "so seemingly remote from any relevant date" as the time of the doctor's examination.

Thus evidence of past habitual use of narcotics remote to the events at trial is inadmissible "to impeach perception or memory unless there is expert testimony on the probable effect of such use on those faculties." (**People vs. Balderas** (1985) 41 Cal.3d 144, 191.)

Improperly admitted evidence of a defendant's past drug use was found highly prejudicial and cause for reversal in **People vs. Valentine** (1988) 207 Cal.App.3d 697, 705-706, even though a limiting instruction was given.

CONCLUSION

The only relevance of alcohol or drug use is for impeachment or motivation evidence, and then only on the date of the alleged offense.

The defense will not introduce character evidence as to defendant's drinking habits or prior narcotic usage and therefore the prosecution cannot. The defense will not raise any issue of defense, such as diminished capacity due to involuntary intoxication, and therefore, alcohol use and drug use is not relevant and not in issue.

Dated:

Respectfully submitted,

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Attorney for Defendant