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Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

THE PEOPLE OF THE STATE OF	)	Case No.
CALIFORNIA,	)	
	)	MOTION TO EXCLUDE/ SANITIZE PRIOR FELONY CONVICTION FOR IMPEACHMENT
Plaintiff,	)	
vs.	)	
	)	
Defendant.	)	Date:
	)	Time:
	)	Dept:

TO: All parties and to their attorneys of record, and to the  
Honorable Judge of the Superior Court.

Discovery provided by the District Attorney indicates that Defendant has  
suffered (specify number) of prior felony conviction(s) for (specify offense), in violation  
of Penal Code  
§ (specify section or sections). These convictions occurred (specify dates and how  
many years ago). Defendant moves to exclude the use of this/these conviction(s) for  
impeachment purpose should he/she chose to testify at trial.

I

**THE TRIAL COURT RETAINS DISCRETION TO  
EXCLUDE PRIOR FELONY CONVICTIONS OFFERED TO**

1 **IMPEACH A WITNESS/DEFENDANT.**

2  
3 California Constitution Article 1, §28(f) purports to provide for the unlimited  
4 use of prior felony convictions to impeach a witness in any criminal proceeding.  
5 However, the California Supreme Court in **People vs. Castro** (1985) 38 Cal.3d 301  
6 determined that the language of that section left intact the trial court's discretion to  
7 exclude prior felony convictions offered for impeachment purposes if they did not  
8 involve moral turpitude and/or if their probative value was outweighed by their  
9 prejudicial impact within the meaning of Evidence Code §352. (**Id.**, at p. 306, 312.)  
10

11 **If felony(s) has been previously held to involve moral turpitude, use the**  
12 **following paragraph. If it has not, use the second paragraph instead.**

13 Given that the prior felony conviction(s) at issue herein involve moral  
14 turpitude (cite a case holding the felony in question involves moral turpitude. Go to CEB  
15 California Law Criminal Procedure and Practice 4<sup>th</sup> Edition, pages 930-932 for a listing  
16 of cases holding various felonies involve or do not involve moral turpitude) this court  
17 must decide if it should nevertheless be excluded pursuant to Evidence Code §352.

18 **Or**

19 The prior felony in question is not one that caselaw has found to involve  
20 moral turpitude and indeed it does not by the standards governing that determination.  
21 Moral turpitude was defined in **Castro** as conduct indicating bad character, a readiness  
22 to do evil or moral depravity of any kind. (**Castro, supra**, 38 Cal.3d at p. 314.) In  
23 **People vs. Sanders** (1992) 10 Cal.App.4th 1268, 1274 it was deemed to be conduct  
24 involving violence, menace or threats, whereas the court in **People vs. Mansfield**  
25 (1988) 200 Cal.App.3d 82, 87 described it as "an act of baseness, vileness or depravity

1 in the private and social duties which a man owes to his fellowmen, or to society in  
2 general, contrary to the accepted and customary rule of right and duty between man  
3 and man. . ."

4 To determine whether a prior felony conviction involves moral turpitude, a  
5 trial court "must look to the statutory definition of the particular crime and only if the least  
6 adjudicated elements of the crime necessarily involve moral turpitude is the prior  
7 conviction admissible for impeachment purposes. [Citation.]" (**Id.**, at p. 87; **People vs.**  
8 **Forster** (1994) 29 Cal.App.4th 1746, 1756-1757.)

9  
10 Now you must set forth the particular elements of the prior you are dealing with  
11 and show why it doesn't involve moral turpitude.

12 Thus, Defendant contends the prior at issue does not involve moral  
13 turpitude and is not available for impeachment. Should this court decide otherwise, the  
14 prior must be excluded per Evidence Code §352, as will be argued below.

## 15 II

### 16 FACTORS TO BE CONSIDERED IN ASSESSING 17 WHETHER EVIDENCE CODE §352 PRECLUDES THE 18 USE OF A PRIOR FELONY CONVICTION 19 FOR IMPEACHMENT PURPOSES.

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21 In **Castro**, the court indicated that trial courts should continue to be  
22 guided, but not bound by the factors set forth in **People vs. Beagle** (1972) 6 Cal.3d  
23 441, 453 in determining whether Evidence Code §352 allows the use of a prior felony  
24 conviction for impeachment purposes. These factors include the following:  
25

1           1. Does the prior felony conviction involve honesty or veracity? For  
2 example, in **Castro**, the court found that impeachment of the defendant with a  
3 conviction for possession of drugs for sale did not involve the trait of dishonesty and  
4 therefore should not have been allowed. (**Castro**, 38 Cal.3d at p. 317.) Assaultive  
5 crimes do not weigh as heavily in the balance favoring admissibility as a conviction  
6 based on dishonesty. (**People vs. Cavazos** (1985) 172 Cal.App.3d 589, 593; **People**  
7 **vs. Kane** (1984) 150 Cal.App.3d 523, 530-31 [impeachment of a witness previously  
8 convicted of taking a woman across state lines for immoral purposes precluded since  
9 the prior conviction did not involve honesty or veracity].)

11           2. Is the prior felony conviction remote in time? (See **People vs. Von**  
12 **Villas** (1992) 11 Cal.App.4th 175 [impeachment of a witness with a twenty year old prior  
13 burglary conviction not allowed]; **People vs. St. Clair** (1992) 2 Cal.4th 629 [reviewing  
14 court upheld exclusion for impeachment purposes of a witness's twenty-two year old  
15 manslaughter prior conviction].) In assessing whether or not the prior conviction is  
16 remote, the court should consider per **Beagle**:

17           a. The time that has elapsed since the conviction. (In **People vs.**  
18 **DeCosse** (1986) 183 Cal.App.3d 404, a twenty year old conviction was not found  
19 remote in light of the defendant's subsequent criminal behavior.)

21           b. The amount of time the defendant was at liberty between offenses.

22           c. Whether or not the defendant has led a legally blameless life following  
23 the conviction. This involves a consideration of the defendant's conduct subsequent to  
24 the conviction. (**People vs. Tamborrino** (1989) 215 Cal.App.3d 575, 590; **People vs.**  
25 **Campbell** (1994) 23 Cal.App.4th 1488, 1496.)

1 d. The defendant's age at the time of the prior conviction. A prior  
2 occurring when the defendant was very young weighs in favor of a determination that it  
3 should be excluded as less probative of credibility. (**People vs. Burns** (1987) 189  
4 Cal.App.3d 734.)

5 3. Whether or not the prior conduct involves the same or similar conduct  
6 for which the defendant is currently on trial. Although a trial court is not required to  
7 exclude a prior that falls into this category (**Tamobrrino, supra**, 215 Cal.App.3d at p.  
8 590), there is a high danger of prejudice resulting from the use of such a prior to  
9 impeach because the jury will be more likely to conclude that a defendant is guilty of the  
10 current crime if he committed the same or similar one in the past. (**Beagle, supra**, 6  
11 Cal.3d at p. 453.)

12 4. Whether or not the defendant will decide not to testify if **he/she** is  
13 impeached.

14 Defendant contends that **his/her** prior felony conviction(s) should be  
15 excluded for impeachment purposes for the following reasons. **Now argue the specific**  
16 **factors in your case that weigh in favor of exclusion. Add the following paragraph if you**  
17 **are seeking to exclude a number of prior felony convictions.**

18  
19 As noted above, Defendant has \_\_\_\_\_ prior felony convictions. It is  
20 requested that this court limit the number of such priors to be used for impeachment  
21 purposes to \_\_\_\_\_. It is within the court's discretion to limit the number of priors  
22 available for impeachment. (**People vs. Muldrow** (1988) 202 Cal.App.3d 636, 646;  
23 **People vs. Dillingham** (1986) 186 Cal.App.3d 688, 695.)  
24  
25

1 Add the following section if your case involves the use of priors that are  
2 the same or similar to the currently charged offense:

3 III

4 DEFENDANT'S PRIOR CONVICTION FOR (Insert felony)  
5 SHOULD BE SANITIZED SHOULD THIS COURT DECLINE  
6 TO EXCLUDE IT.  
7

8 In **People vs. Foreman** (1985) 174 Cal.App.3d 175, decided after **Castro**,  
9 the reviewing court held that in the post-**Beagle** era, sanitization of priors involving the  
10 same or similar conduct as that for which a defendant is presently on trial is proper. In  
11 **Foreman** the defendant was on trial for burglary and had been previously convicted of  
12 same. The trial court determined that the prosecutor could ask him if he had been  
13 convicted of a felony involving theft. (**Id.**, at p. 179.) The defendant testified and was  
14 impeached with the sanitized prior.  
15

16 The **Foreman** court upheld this sanitization procedure, which had been  
17 proscribed prior to the passage of Proposition 8. (See **People vs. Barrick** (1982) 33  
18 Cal.3d 115.) In so doing, the **Foreman** court reasoned that a defendant who chooses  
19 to testify is not entitled to a "false aura of veracity" and that prior court decisions  
20 disapproving such sanitization were no longer the law. The court concluded, "We are  
21 free to freshly approach the problem under the flexible factors established by **People**  
22 **vs. Beagle** [citation omitted]." (**Foreman, supra**, 174 Cal.App.3d at p. 182.) Also see  
23 **People vs. Massey** (1987) 192 Cal.App.3d 819, 825 [generic sanitization of prior to  
24 "offense involving theft"].)  
25

CONCLUSION

1                   Based on the foregoing, Defendant requests that his/her prior  
2 conviction(s) for (insert felony) be deemed inadmissible for impeachment purposes. In  
3 the alternative, should this Court allow such impeachment, Defendant requests that the  
4 prior(s) be sanitized.

5 Dated:                                   Respectfully submitted,  
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9   Attorney for Defendant  
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