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SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF [redacted]

<p>THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>[redacted] Defendant</p> <hr/>	<p>)))))))))))</p>	<p>Case No.:</p> <p>Motion to Exclude Assertion of Privileges</p> <p>Date:</p> <p>Time:</p> <p>Dept:</p>
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The defense moves for a protective order that:

1. Any past assertion of right against self-incrimination by defendant is inadmissible.
2. Any past assertion of the attorney-client privilege by defendant is inadmissible.
3. Any past assertion by defendant or his wife of their marital communication privilege is inadmissible.
4. Waiver of the privilege not to testify by defendant's spouse is not a waiver of marital communication privileges and neither spouse can be asked about privileged marital communications.
5. The district attorney shall instruct the witnesses not to volunteer any such information.

II

THERE CAN BE NO COMMENT ON PRIVILEGE

Sec. 913. Comment on, and inferences from, exercise of privilege. "(a) If in the instant proceeding or on a prior occasion a privilege is or was exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, neither the presiding officer nor counsel may comment thereon, no presumption shall arise because of the

1 exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the
2 credibility of the witness or as to any matter at issue in the proceeding."

3 Comment on assertion of attorney-client privilege is misconduct. *People vs. Latham*
4 (1961) 192 CA2d 216, 222, 13 Cal. Rptr. 325.

5 Comment on assertion of husband-wife privilege not to testify is misconduct. *People vs.*
6 *Klor* (1948) 32 C2d 658, 663, 197 P.2d 705; *People vs. Wilkes* (1955) 44 C2d 679, 687, 284
7 P.2d 481.

8 Comment on assertion of self-incrimination privilege is misconduct. *Griffin vs.*
9 *California* (1965) 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106.

10 **III**

11 **PRIVILEGES**

12 Evid. Code Sec. 930. Privilege not to be called as a witness and not to testify. To the
13 extent that such privilege exists under the Constitution of the United States or the State of
14 California, a defendant in a criminal case has a privilege not to be called as a witness and not to
15 testify.

16 Evid. Code Sec. 940. Privilege against self-incrimination. To the extent that such
17 privilege exists under the Constitution of the United States or the State of California, a person
18 has a privilege to refuse to disclose any matter that may tend to incriminate him.

19 Evid. Code Sec. 970. Privilege not to testify against spouse. "Except as otherwise
20 provided by statute, a married person has a privilege not to testify against his spouse in any
21 proceeding."

22 Evid. Code Sec. 980. Privilege for confidential marital communications. "Subject to
23 Section 912 and except as otherwise provided in this article, a spouse (or his guardian or
24 conservator when he has a guardian or conservator), whether or not a party, has a privilege
25 during the marital relationship and afterwards to refuse to disclose, and to prevent another from
26 disclosing, a communication if he claims the privilege and the communication was made in
27 confidence between him and the other spouse while they were husband and wife."
28

1 Evid. Code Sec. 954. Lawyer-Client Privilege. "Subject to Section 912 and except as
2 otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to
3 disclose, and to prevent another from disclosing, a confidential communication between client
4 and lawyer if the privilege is claimed by:

5 (a) The holder of the privilege;"
6

7 **IV**

8 **THE TWO MARITAL PRIVILEGES DISTINGUISHED**

9 The marital confidential communication privilege (EvCode Sec. 980) and the
10 spousal privilege (EvCode Sec. 970) are distinct privileges. For example, after a divorce a
11 spouse can be compelled to testify against an ex-spouse and the EvCode Sec. 970 privileges no
12 longer applies. However, the ex-spouse cannot testify about confidential communication
13 because EvCode Sec. 980 still applies. People vs. Loper (1910) 159 C 6, 12, 112 p. 720; People
14 vs. Godines (1936) 17 CA2d 721, 727, 62 P.2d 787.

15 **COMMENT**

16 The spouse can waive the privilege not to testify and testify to events the spouse has seen
17 and not waive the marital confidential communication privilege. Witnesses many times have
18 two separate privileges. The defendant and spouse have a privilege against self-incrimination, a
19 husband-wife privilege and a marital confidential communication privilege. A waiver of any one
20 of these privileges is not a waiver of the other two.

21 Dated this __ day of __, 20__

22
23 **INNOCENCE LEGAL**
24 **TEAM**
25 **Names of attorney(s)**
26 **Attorney for Defendant**
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