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9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

10  
11 THE PEOPLE OF THE STATE OF ) Case No.  
12 CALIFORNIA, )  
13 ) MOTION TO EXCLUDE/  
14 Plaintiff, ) SANITIZE PRIOR FELONY  
15 ) CONVICTION FOR  
16 vs. ) IMPEACHMENT  
17 )  
18 )  
19 Defendant. ) Date:  
20 ) Time:  
21 ) Dept:  
22 \_\_\_\_\_)

23  
24 TO: All parties and to their attorneys of record, and to the  
25 Honorable Judge of the Superior Court.

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

8  
9 I

10           **THE TRIAL COURT RETAINS DISCRETION TO**  
11           **EXCLUDE PRIOR FELONY CONVICTIONS OFFERED TO**  
12           **IMPEACH A WITNESS/DEFENDANT.**

13  
14           California Constitution Article 1, §28(f) purports to provide for  
15 the unlimited use of prior felony convictions to impeach a witness in any  
16 criminal proceeding. However, the California Supreme Court in **People vs.**  
17 **Castro** (1985) 38 Cal.3d 301 determined that the language of that section left  
18 intact the trial court's discretion to exclude prior felony convictions  
19 offered for impeachment purposes if they did not involve moral turpitude  
20 and/or if their probative value was outweighed by their prejudicial impact  
21 within the meaning of Evidence Code § 352. (Id., at p. 306, 312.)

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23           If felony(s) has been previously held to involve moral turpitude,  
24 use the following paragraph. If it has not, use the second paragraph instead.  
25



1 necessarily involve moral turpitude is the prior conviction admissible for  
2 impeachment purposes. [Citation.]” (Id., at p. 87; **People vs. Forster** (1994)  
3 29 Cal.App.4th 1746, 1756–1757.)  
4

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

7 Thus, Defendant contends the prior at issue does not involve moral  
8 turpitude and is not available for impeachment. Should this court decide  
9 otherwise, the prior must be excluded per Evidence Code § 352, as will be  
10 argued below.  
11

12 II

13 **FACTORS TO BE CONSIDERED IN ASSESSING**  
14 **WHETHER EVIDENCE CODE § 352 PRECLUDES THE**  
15 **USE OF A PRIOR FELONY CONVICTION**  
16 **FOR IMPEACHMENT PURPOSES.**  
17

18 In **Castro**, the court indicated that trial courts should continue  
19 to be guided, but not bound by the factors set forth in **People vs. Beagle**  
20 (1972) 6 Cal.3d 441, 453 in determining whether Evidence Code § 352 allows the  
21 use of a prior felony conviction for impeachment purposes. These factors  
22 include the following:  
23

- 24 1. Does the prior felony conviction involve honesty or veracity?  
25

For example, in **Castro**, the court found that impeachment of the defendant

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

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

18  
19 a. The time that has elapsed since the conviction. (In **People**  
20 **vs. DeCosse** (1986) 183 Cal.App.3d 404, a twenty year old conviction was not  
21 found remote in light of the defendant's subsequent criminal behavior.)  
22

23 b. The amount of time the defendant was at liberty between  
24 offenses.  
25

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

5  
6 d. The defendant's age at the time of the prior conviction. A  
7 prior occurring when the defendant was very young weighs in favor of a  
8 determination that it should be excluded as less probative of credibility.  
9 (**People vs. Burns** (1987) 189 Cal.App.3d 734.)

10  
11 3. Whether or not the prior conduct involves the same or similar  
12 conduct for which the defendant is currently on trial. Although a trial court  
13 is not required to exclude a prior that falls into this category (**Tamobrrino,**  
14 **supra**, 215 Cal.App.3d at p. 590), there is a high danger of prejudice  
15 resulting from the use of such a prior to impeach because the jury will be  
16 more likely to conclude that a defendant is guilty of the current crime if he  
17 committed the same or similar one in the past. (**Beagle, supra**, 6 Cal.3d at p.  
18 453.)

19  
20  
21 4. Whether or not the defendant will decide not to testify if  
22 **he/she** is impeached.

23 Defendant contends that **his/her** prior felony conviction(s) should  
24 be excluded for impeachment purposes for the following reasons. **Now argue the**  
25 **specific factors in your case that weigh in favor of exclusion. Add the**

1 following paragraph if you are seeking to exclude a number of prior felony  
2 convictions.

3 As noted above, Defendant has \_\_\_\_\_ prior felony convictions. It  
4 is requested that this court limit the number of such priors to be used for  
5 impeachment purposes to \_\_\_\_\_. It is within the court's discretion to limit  
6 the number of priors available for impeachment. (**People vs. Muldrow** (1988)  
7 202 Cal.App.3d 636, 646; **People vs. Dillingham** (1986) 186 Cal.App.3d 688,  
8 695.)

9  
10  
11 Add the following section if your case involves the use of priors  
12 that are the same or similar to the currently charged offense:

13 III

14 DEFENDANT'S PRIOR CONVICTION FOR (**Insert felony**)  
15 SHOULD BE SANITIZED SHOULD THIS COURT DECLINE  
16 TO EXCLUDE IT.

17  
18 In **People vs. Foreman** (1985) 174 Cal.App.3d 175, decided after  
19 **Castro**, the reviewing court held that in the post-**Beagle** era, sanitization of  
20 priors involving the same or similar conduct as that for which a defendant is  
21 presently on trial is proper. In **Foreman** the defendant was on trial for  
22 burglary and had been previously convicted of same. The trial court  
23 determined that the prosecutor could ask him if he had been convicted of a  
24  
25

1 felony involving theft. (*Id.*, at p. 179.) The defendant testified and was  
2 impeached with the sanitized prior.

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

### 16 CONCLUSION

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

22 Dated:

Respectfully submitted,

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Attorney for Defendant

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