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5 Attorney for ClientName,
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7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
8 IN AND FOR THE COUNTY OF KERN
9

10 People of the State of California,) CASE NO. [Case Number]
11 Plaintiffs,)
12 - vs -) [CLIENT NAME] MOTION TO SUPPRESS
EVIDENCE
) (Penal Code §1538.5)
13 Client Name,) DATE: Hearing Date
14 Defendant) TIME: 10:00 a.m.
15) DEPT: CC
16) Readiness: Readiness Date
Trial: Trial Date
)
)

17 **TO THE COURT AND THE DISTRICT ATTORNEY: PLEASE TAKE NOTICE** that at
18 the date and time indicated above, or as soon thereafter as the matter can be heard in the above
19 entitled court, the defendant will move that the Court suppress all evidence seized in the above
20 entitled case including, but not limited to all officer observations, witness identifications, and all
21 physical and intangible evidence seized or obtained as a result of search and seizure violations
22 that occurred during all searches in this case, including the search of Defendant's person.

23 The motion will be based on this notice of motion, the attached declaration, the
24

1 memorandum of points and authorities served and filed herewith, the records on file in this action
2 and on such oral and documentary evidence as may be presented at the hearing.

3 Date: January 2, 2020

4
5 By _____
6 Great Attorney,
7 Attorney for Client Name

8
9 **DECLARATION OF COUNSEL**

10 I, Great Attorney, declare:

11 I am informed and believe that the search complained of was without a warrant, or that
12 any warrant was invalid, or that the fruits of any warrant were previously suppressed, or that
13 there are other defects in the search necessitating suppression in this matter.

14 Case specific allegations are contained in the attached Statement of the Case, and I am
15 informed and believe that the factual assertions therein are true and correct.

16 Dated: January 2, 2020

17 By _____
18 Great Attorney,
19 Attorney for Client Name

1 **STATEMENT OF THE CASE**

2 Officers responded to a report that several Hispanic juveniles had shoplifting from a
3 convenience store. Defendant, an adult Hispanic male, was stopped nearby and subjected to a
4 patdown search, and methamphetamine was located in his front pocket.

5 Defendant contends that the patdown search was illegal and all contraband found during
6 that search and must be suppressed.
7

8 **POINTS, AUTHORITIES AND ARGUMENT**

9 The fruits of an unlawful search must be suppressed (see *Fourth Amendment, United*
10 *States Constitution; Badillo v. Superior Court* (1956) 46 Cal 2nd 269; *Alexander v. Superior*
11 *Court* (1973) 9 Cal 3rd 387; *Penal Code* § 1538.5.)

12 The burden is on the Prosecution (*People v. Williams* (1999) 20 Cal 4th 119, 136).

13 The court in *Wilder v. Superior Court* set forth the proper procedure for a suppression
14 motion when the seizure complained of was made without a warrant:

15 The procedural problem arises from the fact that [the defendant], as the moving
16 party, must necessarily file the first pleading-his motion to suppress evidence.

17 Once [the defendant] has produced evidence to show that the seizure was without
18 a warrant, [the prosecution] bears the burden of proving the only substantive issue
19 at the hearing upon that motion-justification for the warrantless seizure. [citations]

20 The obvious solution to this problem is a suppression motion pleading procedure
21 whereby [the prosecution] speaks first to the issue upon which it bears the burden
22 of proof and [the defendant] thereafter responds...
23
24

1 ...if [the prosecution] fails to justify the seizure, [the defendant] wins his
2 suppression motion whether or not [the defendant] asserts subsequent specific
3 contentions.

4 *Wilder v. Superior Court* (1979) 92 Cal.App.3d 90

5 In the recent matter of *In re: Jeremiah S.* (2019) 41 Cal.App.5th 299, the court noted that
6 a patdown search is unjustified unless the officer has “specific and articulable facts to support a
7 reasonable suspicion” that the person being detained is armed and dangerous.” In *Jeremiah* as in
8 the instant case, there were no such facts.

9 In *Jeremiah*, supra, the court reversed, stating "the officer who conducted the patsearch
10 did not present specific and articulable facts to support a reasonable suspicion that Jeremiah was
11 armed and dangerous. In so concluding, we decline to recognize a rule that would essentially
12 validate any patsearch of a suspected robber who is lawfully detained following a report of a
13 fresh robbery, regardless of the particular circumstances."