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5 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
6 IN AND FOR THE COUNTY OF KERN

7 People of the State of California, ) CASE NO. [Case Number]  
8 Plaintiffs, )  
9 - vs - ) **[CLIENT NAME] MOTION TO PROHIBIT**  
10 Client Name, ) **REFERENCE TO UNCHARGED BAD**  
11 Defendant ) **ACTS**  
12 )

13 TO THE COURT AND THE PROSECUTION, PLEASE TAKE NOTICE that Defendant moves  
14 the Court for an order prohibiting the Prosecution from directly or indirectly using, mentioning,  
15 or attempting to convey to the jury in any way information concerning any alleged prior bad acts  
16 attributed to Defendant, not resulting in a conviction.

17 This motion is made on the grounds that such evidence would be irrelevant and more  
18 prejudicial than probative.

19 Date: January 1, 2020

20  
21 By \_\_\_\_\_  
Great Attorney,  
22 Attorney for Client Name  
23  
24

1 **POINTS, AUTHORITIES, AND ARGUMENT**

2 The admission of any evidence that involves crimes other than those for which a defendant is  
3 being tried has a “highly inflammatory and prejudicial effect” on the trier of fact (*People v.*  
4 *Thompson* (1980) 27 Cal. 3<sup>rd</sup> 303, 314).

5 “Evidence of uncharged offenses is so prejudicial that its admission requires extremely  
6 careful analysis.” (*People v. Ewoldt* (1994) 7 Cal. 4<sup>th</sup> 380, 403, citations omitted).

7 “Regardless of its probative value, evidence of other crimes always involves the risk of  
8 serious prejudice...” (*People v. Griffin* (1967) 66 Cal. 2<sup>nd</sup> 459, 466).

9 Before admitting evidence of other crimes in penalty phase, the Court must determine  
10 whether the evidence rises to the "beyond a reasonable doubt" standard.

11 As recently explained by our Supreme Court in *People v. Johnson* (2019) 8 Cal.5th 475,  
12 “Section 190.3, factor (b) permits the jury to consider the “presence or absence of criminal  
13 activity by the defendant which involved the use or attempted use of force or violence or  
14 the express or implied threat to use force or violence.” Before the evidence is presented to the  
15 jury, the trial court must determine that the evidence offered would allow a rational trier of fact  
16 to decide beyond a reasonable doubt that the defendant committed the criminal activity alleged  
17 under factor (b). (*People v. Clair* (1992) 2 Cal.4th 629, 676.)”

18 The “bad act” evidence attributed to Defendant does not rise to this standard. Should the  
19 Court be inclined to admit evidence of prior bad acts, Defendant requests that the evidence first  
20 be presented to the Court out of the presence of the jury pursuant to *Evidence Code §402* so the  
21 Defense can make appropriate objections and the Court can determine whether the evidence rises  
22 to the high standard of being sufficient to establish beyond a reasonable doubt that Defendant  
23 committed the bad acts.