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5 Attorney for Client Name,
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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 PROHIBIT**
13 Client Name,) **REFERENCE TO LACK OF REMORSE**
14 Defendant)
15)
16)

17 TO THE COURT AND THE PROSECUTION, PLEASE TAKE NOTICE that Defendant moves
18 the Court for an order prohibiting the Prosecution from directly or indirectly using, mentioning,
19 or attempting to convey to the jury in any way information concerning any alleged lack of
20 remorse by Defendant.

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

23 Date: January 1, 2020
24

1
2 By _____
3 Great Attorney,
4 Attorney for Client Name

5
6 **POINTS, AUTHORITIES, AND ARGUMENT**

7 As recently observed by the California Supreme Court in *People v. Johnson* (2019) 8 Cal.5th
8 475:

9 “A lack of remorse is not enumerated as an aggravating factor under section 190.3. A
10 prosecutor, therefore, should not argue that the absence of remorse is a factor in
11 aggravation. (*People v. Keenan* (1988) 46 Cal.3d 478, 510; see also *People v. Rivera*
12 (2019) 7 Cal.5th 306, 343 (*Rivera*) [postcrime evidence of remorselessness does not fit
13 within any statutory sentencing factor and should not be urged as aggravating].)”

14 (*Johnson, supra*)

15 “[U]nless a defendant opens the door to the matter in his or her case-in-chief [citation] his or
16 her remorse is irrelevant at the guilt phase.” (*People v. Powell* (2018) 6 Cal. 5th 136, 172, quoting
17 *People v. Jones* (1998) 17 Cal. 4th 279, 307; accord, *People v. Riggs* (2008) 44 Cal. 4th 248, 301)

18 Not only is post-offense lack of remorse irrelevant and inadmissible, but evidence of lack of
19 remorse is extremely powerful (*Eisenberg, Garvey and Wells, But Was he Sorry? The Role of*
20 *Remorse in Capital Sentencing*, 83 Cornell Law Review 1599, 1637; *Sundby, The Capital Jury*
21 *and Absolution: The Intersection of Trial Strategy, Remorse, and the Death Penalty*, 83 Cornell
22 Law Review 1558, 1559) and would violate Defendant’s constitutional rights to due process of
23 law and a fair jury trial.
24