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Please note:  
This sample document is redacted from an actual research and writing project we did for a customer some time ago. It reflects the law as of the date we completed it. Because the law may have changed since that time, please use it solely to evaluate the scope and quality of our work.  
If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF VETIVER

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiffs,  
vs.  
JOHN BROWN,  
Defendant.

Case No. 54321  
NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE;  
MEMORANDUM OF POINTS AND AUTHORITIES  
Date:  
Time:  
Dept.

TO THE DISTRICT ATTORNEY OF THE COUNTY OF VETIVER:

TAKE NOTE that on April 16, 2004, defendant John Brown will move under Penal Code § 1538.5 for an order suppressing the contents of a tool box, specifically a ziploc bag containing 432.02 grams of an off-white substance containing methamphetamine and \$2,122 in United States currency. Defendant also moves to suppress the contents of a ziploc bag found on his person containing 0.68 grams of an off-white substance containing methamphetamine. The motion is made on the grounds that the tool box and defendant's person were searched without a warrant and without probable cause, and without defendant's consent.

The motion is made on the basis of this notice, the attached memorandum of points and authorities and declaration of John Brown, any evidence introduced at the hearing on

1 this motion, and the entire records and proceedings on file in this action.

2 Dated: \_\_\_\_\_, 2004

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Attorney for Defendant

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 The police officers in this action told defendant that, if he did not open his tool box  
7 for them, they would arrest and prosecute him and take the tool box to the police station  
8 where it could be opened. Any consent he gave to opening the tool box was involuntary,  
9 and its contents must be suppressed. Because the search of the tool box was unlawful, so  
10 was defendant's resulting arrest, and any contraband found on his person in the incidental  
11 search must also be suppressed.

12  
13 **STATEMENT OF FACTS**

14 On February 8, 2004, Silver City police officer Smith responded to a report that  
15 defendant had called 911 and said that there was someone trying to get into his house.  
16 Before hanging up, defendant told the dispatcher that he had a gun in a locked tool box in  
17 his house. On arriving at defendant's house, Officer Smith called for back-up and also  
18 asked the communications center to have Brown meet them outside.

19 When Brown came outside, he told the officers that two men had forced their way  
20 into the house. When the officers went into the house, they found no one there. But they  
21 did see the tool box, and they asked defendant to open it. When he refused, they told him  
22 to open it or they would take him to jail and throw the book at him. They also told him  
23 that they would take the tool box downtown and would hold it until they could open it.

24 Brown opened the tool box, and the officers found a large amount of U.S. currency  
25 and a plastic bag containing an off-white powder. Officer Smith told defendant that he  
26 was under arrest. Defendant then volunteered that he had "a little speed" in his pocket.

1 The officers reached into his shirt pocket and removed a piece of foil that contained a  
2 small amount of off-white powder.

3  
4 **ARGUMENT**

5 On motion, the court shall suppress evidence obtained by the People as a result of  
6 a search or seizure on the grounds that the search or seizure without a warrant was  
7 unreasonable. Penal Code § 1538.5(a)(1)(A). The Fourth Amendment to the United  
8 States Constitution prohibits unreasonable searches and seizures. *People v. Williams*  
9 (1999) 20 Cal.4th 119, 125. A warrantless search is presumptively unreasonable, so that  
10 the prosecution has the burden of proving some justification for a warrantless search or  
11 seizure. *Id.* at 127. The defendant has the burden on a § 1538.5 motion to show that the  
12 search was without a warrant and that it was unreasonable under the circumstances. *Id.* at  
13 129. The defendant nonetheless meets the initial burden of production by showing that  
14 the police conducted a warrantless search. *Id.* at 130.

15 Because the search of the tool box was done without a warrant, the People have the  
16 burden of establishing justification under a recognized exception to the warrant  
17 requirement. *People v. James* (1977) 19 Cal.3d 99, 106. The defendant's consent  
18 constitutes such an exception. *Ibid.* The prosecution has the additional burden of proving  
19 that Brown's manifestation of consent was the product of his free will and not a mere  
20 submission to an express or implied assertion of authority. *Ibid.* Consent is not voluntary  
21 if it merely reacts to coercion or duress.

22 Here, defendant opened the tool box only because the police threatened to arrest  
23 him and to take the tool box to the police station if he did not open it. Because the police  
24 obtained his consent by threatening to arrest him without cause, they obtained his consent  
25 by the wrongful assertion of their authority. See *People v. Shelton* (1964) 60 Cal.2d 740,  
26 746. That consent was not voluntary, and the evidence found must be suppressed. *Ibid.*

1           Because the search of the tool box was unlawful, all evidence obtained from  
2 exploiting it must also be suppressed. *Wong Sun v. United States* (1963) 371 U.S. 471,  
3 487. Thus, because defendant's consent to search his clothes for more methamphetamine  
4 came while he was unlawfully detained following the illegal search, that second search is  
5 also involuntary. *People v. Valenzuela* (1994) 28 Cal.App.4th 817, 833. This court  
6 should suppress all evidence found as a result of the original unlawful search.

7  
8 **CONCLUSION**

9           Defendant consented to a search of the tool box only because the police told him  
10 that they would, without probable cause, take both him and it to the police station. After  
11 seizing alleged contraband in the tool box, they arrested him, at which point he told them  
12 about more contraband on his person. Because all of the contraband was found as a result  
13 of the original wrongful assertion of authority, this court should suppress all of it.

14  
15 Dated: \_\_\_\_\_, 2004

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18 Attorney for Defendant  
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