

1 **CLANCY LITIGATION GROUP**

Patrick E. Clancy, SBN 60805
2 Dr. Demosthenes Lorandos, SBN 177644
1600 S. Main St., Suite 185
3 Walnut Creek, CA 94596
Tel: (925) 256-4600
4 eFax: (888) 802-5089

5 Attorneys for Defendant
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9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF
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13	THE PEOPLE OF THE STATE OF)	Case No.
14	CALIFORNIA,)	
15)	MOTION TO EXCLUDE
16	Plaintiff,)	EVIDENCE OF UNCHARGED
17)	BAD ACTS PURSUANT
18	vs.)	TO EVIDENCE CODE
19)	§ 1101
20)	
21	Defendant.)	Date:
22)	Time:
23	_____))	Dept:
24			
25			

1 TO: All parties and to their attorneys of record, and to the
2 Honorable Judge of the Superior Court.

3 Defendant requests that any evidence concerning his commission of
4 prior bad acts as described below be excluded pursuant to Evidence Code
5 section 1101 and based on the following points and authorities.
6

7 I

8 THE PRIOR OFFENSE(S) AT ISSUE

9
10 ****Put a brief description of the prior offense or offenses the
11 People intend to introduce into evidence****

12 II

13 EVIDENCE CODE SECTION 1101

14 With the exception of certain specified prior sex offenses as set
15 forth in Evidence Code section 1108, Evidence Code section 1101(a) prohibits
16 the admission of evidence of a person's character, including instances of
17 charged and uncharged misconduct, to prove that person's conduct on a
18 particular occasion or to prove he or she has a propensity to commit crime in
19 general. (**People vs. Felix** (1993) 14 Cal.App.4th 997, 1004-1005; **People vs.**
20 **Valentine** (1988) 207 Cal.App.3d 697, 702.) Evidence Code section 1101(b)
21 allows such evidence to be admitted if relevant to prove some relevant fact
22 other than a disposition to commit the act, specifically motive, opportunity,
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1 intent, preparation, plan, knowledge, identity or absence of a mistake or
2 accident. (**People vs. Escobar** (1996) 48 Cal.App.4th 999, 1023.)

3 “The rule excluding evidence of criminal propensity is nearly
4 three centuries old in the common law. (Wigmore, Evidence (3d Ed. 1940) Sec.
5 194, pp. 646–647.)” (**People vs. Alcala** (1984) 36 Cal.3d 604, 630–631.) The
6 grave danger inherent in uncharged bad acts evidence is that the jury will
7 give excessive weight to it and convict the defendant regardless of the
8 strength of the evidence of guilt on the charged act. (**People vs. Thompson**
9 (1980) 27 Cal.3d 303, 317.) Because of its inherently prejudicial nature,
10 evidence of other crimes must be excluded if not relevant to an issue
11 expressly in dispute or if it is more prejudicial than probative under all the
12 circumstances. (**People vs. Nottingham** (1985) 172 Cal.App.3d 484, 496.)

13 The admissibility of other crimes evidence is strictly limited by
14 Evidence Code section 352 which mandates the exclusion of evidence the
15 probative value of which is substantially outweighed by its prejudicial impact.
16 (**People vs. Ewoldt** (1994) 7 Cal.4th 404; **People vs. Garcia** (1995) 41
17 Cal.App.4th 1832, 1848.) In order to meet the relevancy requirement of
18 Evidence Code section 1101(b) and pass the balancing test of Evidence Code
19 section 352, the probative value of such evidence must be **substantial** on the
20 theory under which it is tendered. (**People vs. Balcom** (1994) 7 Cal.4th 414,
21 422; **People vs. Thompson, supra**, 27 Cal.3d at p. 318.) To be admitted, the
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1 other acts evidence must (1) tend logically, naturally and by reasonable
2 inference to prove the issue on which it is offered; (2) be offered on a
3 material issue that will ultimately prove to be disputed; and (3) not be
4 merely cumulative with respect to other evidence used to prove the same issue.
5

6 **(People vs. Bigelow (1984) 37 Cal.3d 731, 747.)**

7 As will be argued below, defendant contends that the prior act(s)
8 evidence is irrelevant to prove any disputed fact, including intent, common
9 scheme or plan, identity, motive, plan knowledge, preparation or absence of
10 mistake or accident, therefore its admission is proscribed by Evidence Code
11 section 1101(a). Second, assuming such evidence is relevant to prove any
12 **expressly** disputed fact other than disposition or propensity to commit the
13 charged offense or crime in general, it still should be excluded under
14 Evidence Code section 352.
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17
18 ****Select from the following paragraphs that fit your case. These paragraphs**
19 **are illustrative of the most common issues that arise when arguing against the**
20 **admission of prior bad acts evidence****
21

22 **III**

23 **THE PRIOR BAD ACT(S) EVIDENCE IS**
24 **INADMISSIBLE TO PROVE INTENT.**
25

1 Defendant does not contest the intent element of the charged
2 crime(s). He denies the act(s), therefore inferentially admitting that if he
3 did it he had the requisite intent.
4

5 "If an accused has not actually placed [an ultimate
6 fact] in issue,' evidence of uncharged offenses may
7 not be admitted to prove it. [Citations.] The fact
8 that an accused has pleaded not guilty is not
9 sufficient to place the elements of the crimes charged
10 against him 'in issue.' [Citation.]" (**People vs.**
11 **Thompson, supra**, 27 Cal.3d at p. 315.)
12

13 More recent Supreme Court authority reaches the same result via a
14 different path. In **People vs. Balcom, supra**, a majority of the court
15 rejected the prosecution's contention that a subsequent rape could have been
16 properly admitted at trial in the current case to show the defendant possessed
17 the necessary intent when raping the victim. The **Balcom** court explained:
18

19 "Defendant's plea of not guilty put in
20 issue all of the elements of the offenses,
21 including his intent [citation], and
22 evidence that defendant committed
23 uncharged similar offenses would have some
24 relevance regarding defendant's intent in
25 the present case. But, because the
victim's testimony that defendant placed a

1 gun to her head, if believed, constitutes
2 compelling evidence of defendant's intent,
3 evidence of defendant's uncharged similar
4 offenses would be merely cumulative on
5 this issue. [Citation.]" (7 Cal.4th at p.
6 422-423.)

7
8 The same is true here. Assuming Defendant's guilty plea puts his intent in
9 issue, the description of the charged acts by (insert victim's name), which
10 include (name the offenses) more than amply demonstrate the intent required
11 for a violation of Penal Code § (insert sections with which defendant is
12 charged). Thus, as in **Balcom**, further evidence of Defendant's intent in the
13 form of the uncharged bad act(s) evidence would be strictly cumulative, its
14 prejudicial effect thereby outweighing its limited probative value. (Also see
15 **People vs. Harvey** (1984) 163 Cal.App.3d 90 [reversible error to admit prior
16 robbery to show intent in a current robbery prosecution].)

19 IV

20 THE UNCHARGED ACT(S) EVIDENCE IS 21 INADMISSIBLE TO PROVE COMMON PLAN OR SCHEME. 22

23 In **People vs. Ewoldt**, *supra*, 7 Cal.4th at pp. 401-402, the
24 California Supreme Court explained, ". . . evidence of a defendant's uncharged
25 misconduct is relevant where the uncharged misconduct and the charged offense

1 are sufficiently similar to support the inference that they are manifestations
2 of a common design or plan.” To permit the admission of uncharged acts for
3 the purpose of showing common plan, the evidence of such acts “must
4 demonstrate ‘not merely a similarity in the results, but such a concurrence of
5 common features that the various acts are naturally to be explained as caused
6 by a general plan of which they are the individual manifestations.’ [Citations
7 omitted.]” (Id., at p. 402.)
8

9
10 In the case at bar, there is insufficient similarity between the
11 charged conduct and the uncharged conduct to authorize admission of the latter
12 into evidence. (Concoct an appropriate argument depending upon the specific
13 facts in your case.)
14

15 In sum, the charged and uncharged acts do not share sufficient
16 common features with the charged acts to support an inference that they were
17 part of a common plan or scheme and that Defendant committed them pursuant to
18 that plan.
19

20 IV

21 THE UNCHARGED OFFENSE EVIDENCE 22 IS INADMISSIBLE TO PROVE IDENTITY

23
24 As recently reiterated by the reviewing court in **People vs.**
25 **Erving** (1998) 63 Cal.App.4th 652, 660, “The greatest degree of similarity is

1 required for evidence of uncharged misconduct to be relevant to prove
2 identity.’” The **Erving** court further observed:

3 ”For identity to be established, the
4 uncharged misconduct must share common
5 features that are sufficiently distinctive
6 so as to support the inference that the same
7 person committed both acts. [Citation.] ’The
8 pattern and characteristics of the crimes
9 must be so unusual and distinctive as to be
10 like a signature.’ [Citation.]’” (*Id.*, at p.
11 660.)
12

13 The court in **People vs. Felix, supra**, similarly explained:

14 A modus operandi or criminal signature,
15 creating an inference of identity, is
16 demonstrated ’”when the marks common to the
17 charged and uncharged offense, considered
18 singly or in combination, logically operate
19 to set the charged and uncharged offenses
20 apart from other crimes of the same general
21 variety and, in so doing, tend to suggest
22 that the perpetrator of the uncharged
23 offenses was the perpetrator of the charged
24 offense.” [Citations.]” (**14 Cal. App. 4th**
25 **at p. 1005.**)

1
2 In the instant case, the prior and currently charged conduct are not
3 sufficiently similar or distinctive such that the commission of the former
4 creates an inference of identity as to the latter. (Insert an argument geared
5 to the particular facts of your case describing the differences between the
6 prior bad acts or act and the current charge.)
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IV

THE UNCHARGED OFFENSE EVIDENCE
IS INADMISSIBLE TO PROVE MOTIVE

**This will be totally factbound to your case, so you need to devise
your own specific argument here**

V

ADMISSION OF THE UNCHARGED ACT(S)
EVIDENCE VIOLATES EVIDENCE CODE § 352.

Assuming that this Court finds that prior bad act(s) evidence is
admissible on the issue(s) of intent, common plan or scheme, identity or
motive, it would still be an abuse of discretion pursuant to Evidence Code
section 352 to admit it as its probative value is substantially outweighed by
its prejudicial effect.

The California Supreme Court in leading case on the subject,
People vs. Ewoldt, supra, considered four factors in determining whether the

1 admission of prior bad act(s) evidence would be more prejudicial than
2 probative within the meaning of Evidence Code section 352. These include the
3 (1) strength of the evidence to demonstrate the purpose asserted by the
4 prosecution for its admission; (2) whether the source of the prior bad act(s)
5 evidence is independent of the currently charged offense; (3) whether the
6 prior bad act(s) resulted in conviction, a lack of conviction weighing in
7 favor of undue prejudice; and (4) the time span between prior misconduct and
8 the currently charged offense. (Ewoldt, supra, 7 Cal.4th at pp. 404-405.)

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10
11 ****Insert an argument where you assess your case for undue prejudice against**
12 **the foregoing factors. This argument will be factbound to your particular**
13 **case.****

14
15 **VI**

16 **CONCLUSION**

17 Based on the foregoing, Defendant contends that the prior bad
18 act(s) evidence sought to be admitted by the People must be excluded pursuant
19 to Evidence Code §§ 1101 and 352.

20
21 Dated: Respectfully submitted,

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23 _____

24
25 Attorney for Defendant