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Please note:

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If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email [info@quojure.com](mailto:info@quojure.com).

Attorney for Defendant  
JOHN SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANDSTONE

HENRY GREEN, an individual,  
  
Plaintiff,  
  
vs.  
  
JOHN SMITH, an individual; JOY  
SMITH, an individual; and DOES 1-25,  
inclusive,  
  
Defendants.

Case No.  
  
DEFENDANT JOHN SMITH'S TRIAL  
BRIEF RE EVIDENCE REGARDING  
SALE OF ADJACENT PROPERTY  
  
Date:  
Time:  
Place:

Defendant John Smith hereby renews his objection to the introduction of any evidence regarding the sale of adjacent property, 123 Main Street ("123"). Since the sale of 123 is entirely unrelated to the agreement for the sale of 125 Main Street ("125"), any evidence regarding 123 is irrelevant. Additionally, introduction of such evidence would be improper character evidence under Evidence Code § 1104(a) if Henry seeks to use it to prove John's conduct with regard to the 125 property. Moreover, the evidence regarding 123 cannot meet the requirements necessary for it to be introduced to prove "some other disputed material fact," under Evidence Code § 1104(b). Finally, the evidence should be excluded under Evidence Code § 352 because its prejudice outweighs its probative value.

1 **FACTS**

2 Plaintiff Henry Green seeks specific performance of an alleged oral agreement by  
3 defendants John and Joy Smith to sell him 125 Main Street, a commercial lot in Weigela.  
4 He is also suing for fraud in connection with the transaction. John was initially in contract  
5 to sell the 125 property to Louis Jones in 2\_\_\_\_. When Henry learned of the impending  
6 sale, he asked to buy the property himself. The parties reached an oral agreement that was  
7 essentially the same as the written agreement between John and Jones. When the  
8 agreement was reduced to writing, some of the terms differed from those of the oral  
9 agreement. Because there were disagreements as to some of the written agreement's  
10 terms, the written agreement was never signed by the party to be bound. Although Henry  
11 put some money down on the property, he never opened an escrow. His reasons for failing  
12 to do so were the dispute over the purchase price, as well as "personal reasons."

13 In attempting to prove his claims related to 125, Henry seeks to introduce a  
14 substantial amount of evidence regarding an unrelated real estate deal that occurred in  
15 2\_\_\_\_, in which John sold the adjacent property, 123 Main Street. John was in contract to  
16 sell the 123 property to Jones. But Jones could not get a loan for the amount of square  
17 footage he wanted, because of a lot-line adjustment. The problems with the lot-line  
18 adjustment took a long time to resolve. In the meantime, John was approached by another  
19 buyer who was willing to buy fewer square feet and lease the rest, thus avoiding the lot-  
20 line problem. Thus John told Jones that he had to either close on the property or release  
21 John from the contract. Jones decided to cancel the contract, and the parties worked out  
22 deal for the return of Jones's down payment. John ultimately sold 123 to the other buyer.  
23 John and the new buyer disagreed about certain aspects of the property, like property taxes,  
24 but these disagreements have been resolved.

1 **ARGUMENT**

2 **1. Evidence of John’s conduct with regard to 123 Main Street is**  
3 **inadmissible to prove his conduct with regard to 125 Main Street.**

4 “Evidence of a person’s character or a trait of his or her character (whether in the  
5 form of an opinion, evidence of reputation, or *evidence of specific instances of his or her*  
6 *conduct*) is inadmissible to prove his or her conduct on a specified occasion.” Evid. Code  
7 § 1101(a) (emphasis added). The purpose of this rule is to

8 avoid placing a defendant in the position of having to defend against acts for which he was  
9 not charged, and to guard against the possibility that evidence of other acts having little  
10 bearing on the question of whether the defendant actually committed the act charged would  
11 assume undue proportions and unnecessarily prejudice defendant in the minds of the jury,  
12 as well as promote judicial efficiency by restricting proof of extraneous acts.

13 *People v. Haston* (1968) 69 Cal.2d 233.

14 Here, Henry cannot attempt to use John’s actions with regard to 123 to prove that  
15 John acted similarly with regard to 125. Whether John committed fraud, or some other  
16 tort, with regard to 123 has no bearing on whether John committed fraud with regard to  
17 125. To force John to defend and explain his actions with regard to 123—when John has  
18 not been sued here with regard to any of his actions related to 123—would run the risk of  
19 the 123 transaction’s assuming undue proportions in the minds of the jury, and prejudicing  
20 defendant unduly. Moreover, judicial efficiency would not be served by allowing Henry to  
21 put on four extra witnesses who will require at least four extra hours to testify.

22  
23 **2. Evidence of John’s conduct with regard to 123 is inadmissible to prove**  
24 **“some other disputed material fact.”**

25 Evidence Code § 1101(b) provides that subdivision (a) does not prevent  
26 introduction of evidence that a person committed a crime or a civil wrong if that act is  
27 relevant to some fact (such as such as motive, opportunity, intent, preparation, plan,  
28 knowledge, identity, absence of mistake or accident) other than his or her disposition to

1 commit such an act. Under § 1101(b), the admissibility of prior-act evidence depends on  
2 three principal factors: (1) the materiality of the fact sought to be proved; (2) the  
3 evidence's tendency to prove or disprove the disputed fact; and (3) any other rule or policy  
4 requiring exclusion of the evidence. Note that the principles enunciated in criminal cases  
5 concerning the admissibility of prior uncharged acts apply as much to civil cases as to  
6 criminal cases. *Hassoldt v. Patrick Media Group* (2000) 84 Cal.App.4th 152; *Brown v.*  
7 *Smith* (1997) 55 Cal.App.4th 767.

8         The first factor, materiality of the disputed fact, is present if the fact is either an  
9 ultimate fact or an intermediate fact from which an ultimate fact can be inferred, and the  
10 ultimate fact is actually in dispute. The second factor, tendency to prove or disprove the  
11 disputed fact, requires a factual examination of the similarities between the charged  
12 conduct and the prior conduct, to determine whether the prior conduct naturally, logically,  
13 or by reasonable inference establishes the disputed fact. *People v. Gillard* (1997) 57  
14 Cal.App.4th 136. The degree of similarity needed varies depending on the issue sought to  
15 be proved. *People v. Ewoldt* (1994) 7 Cal.4th 380. For instance, the least degree of  
16 similarity is required when the issue sought to be proved is whether the defendant harbored  
17 the requisite intent for the charged crime, because recurrence of a similar result tends  
18 increasingly to negate accident, inadvertence, or other innocent mental states, and instead  
19 tends to show presence of criminal intent that normally accompanies a crime. A greater  
20 degree of similarity is required to prove a common scheme or plan. With a common plan  
21 or scheme, the evidence must show more than merely similar results. Instead, there must  
22 be "such a concurrence of common features that the various acts can be explained as being  
23 caused by a general plan of which they are but individual manifestations." *Ewoldt* at 402-  
24 403. The common features must show the existence of a plan rather than a series of  
25 spontaneous acts. *Ibid.*

26         As for the third factor, the policy referred to is primarily that found in Evidence  
27 Code § 352: weighing the prejudicial effect of such evidence against its probative value.  
28 *Brown v. Smith, supra.* For that reason, the court must always analyze the evidence under

1 § 352. Moreover, the record must reflect that the trial court has made a § 352 evaluation of  
2 the evidence, even if the court does not specifically articulate its weighing process. *Ibid.*  
3 The third factor will be analyzed separately below.

4 Here, the evidence should be excluded under Evidence Code § 1101(b) because  
5 Henry cannot meet the second factor set forth above. He cannot show that there is a  
6 tendency of the evidence related to 123 to prove or disprove that there was a common plan  
7 or scheme, or absence of mistake or accident, with regard to 125. The facts surrounding  
8 the two transactions are simply not similar enough. There is no “concurrence of common  
9 features,” let alone common features that “show the existence of a plan rather than a series  
10 of spontaneous acts.” The details of what went wrong, if anything, with regard to 125 are  
11 in no way consistent or analogous with what went wrong, if anything, with regard to 123.  
12 Each transaction involved a whole series of actions on John’s part, most of which were  
13 John simply *reacting* to the various events that arose with regard to each transaction. The  
14 only common features are that John owned both properties and that Jones, at one time, was  
15 in contract to buy them. Beyond that, Henry can point to no specific common features  
16 between the two transactions that would show the existence of a plan or scheme.

17  
18 **3. Evidence of John’s conduct with regard to 123 should be excluded**  
19 **because its probative value does not outweigh the potential for prejudice.**

20 Evidence Code § 352 provides that evidence must be excluded where its prejudicial  
21 effect outweighs its probative value. Evidence of uncharged offenses is so prejudicial that  
22 its admission requires extremely careful analysis. *Ewoldt, supra*. Where the connection  
23 between the uncharged offense and the ultimate fact in dispute is not clear, the court  
24 should exclude the evidence. *Brown v. Smith, supra*. Since substantial prejudice is  
25 inherent in such evidence, uncharged offenses are admissible only if they have substantial  
26 probative value, and should be admitted only with caution. *People v. Balcom* (1994) 7  
27 Cal.4th 414.

28 Here, evidence related to 123 has very little—if any—probative value, and certainly

1 does not have “substantial” probative value. The alleged connection between the 123  
2 transaction and the 125 transaction is not “clear.” The only similarities between the two  
3 transactions are that John owned both properties and that Jones had contracted to buy  
4 them. Other than that, the details of the transactions are very different from each other.

5 On the other hand, the prejudicial effect of admitting such evidence is inordinate.  
6 First, there is the very real possibility of confusing the jury. The facts surrounding 125 are  
7 complex enough; adding to that mix the complicated facts involved in 123 will make it  
8 nearly impossible for the jury to keep track of the details. It will surely confuse the facts  
9 from 123 with the facts from 125, and John could easily be punished for what occurred in  
10 the 123 transaction.

11 Second, admitting evidence of the 123 transaction will result in undue consumption  
12 of time at trial, and drag out an already excessively long jury trial, given the causes of  
13 action at issue. Allowing evidence of the 123 transaction will add at least four extra  
14 witnesses and consume an extra day, or more, of trial testimony.

15  
16 **CONCLUSION**

17 All evidence related to the 123 property is irrelevant to prove John’s actions with  
18 regard to 125. Additionally, such evidence is improper character evidence where it is  
19 introduced to show John’s actions on specified occasions. Furthermore, such evidence is  
20 not admissible to prove some other material fact in dispute. Lastly, such evidence should  
21 be excluded under Evidence Code § 352 because its probative value is not outweighed by  
22 the prejudice to John if the evidence is introduced. For all these reasons, all evidence  
23 related to 123 should be excluded from the trial.

24  
25 Dated: \_\_\_\_\_, 2\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Attorney for Defendant  
JOHN SMITH