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LOS ANGELES
SUPERIOR COURT

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 PHILLIP SPECTOR,

16 Defendant.

Case No. BA255233

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO ADMIT EVIDENCE OF
OTHER CRIMES**

Date: August 14, 2008
Time: 1:30 PM
Court: Department 106

17
18 Defendant Phillip Spector has built a history, spanning some 40 odd years, of using gun-
19 related violence when confronted with a situation wherein he feels a loss of control, or a threat to
20 his control. Pursuant to Cal. Evid. Code § 1101(b), the People seek to admit evidence of the
21 following uncharged crimes.
22

23 **I. BACKGROUND**

24 On February 3, 2003, Defendant Phillip Spector shot Lana Clarkson to death in the foyer
25 of his Alhambra home. After the shooting, Spector opened the back door to his house, stood in
26 the doorway and told Adriano DeSouza, his driver, "I think I killed somebody." Only Spector
27
28

1 and Clarkson were in the house at the time. Within minutes, the police were on the scene, and
2 Spector was eventually taken into custody.

3 Defendant Spector has an on-going pattern of resorting to gun-related violence to exert
4 his will when he does not get his way, or perceives what he believes is either a threat to or loss of
5 his control over a given situation. This court has already ruled as admissible under Evidence
6 Code section 1101(b) the testimony of five women each of whom testified about Spector's gun-
7 related violence against them occurring between the mid-1970s and 1995. Given that the
8 testimony of these five witnesses (Melvin, Ogden, Jennings, Gosvenor and Robitaille) has
9 already been admitted by this court, and the request for the sixth, Norma Kemper, is filed under
10 separate cover, such witnesses will not be outlined herein. However, they are obviously included
11 in each of the arguments set forth in this motion.

12 **II. OTHER ACTS OF GUN-RELATED VIOLENCE SUBMITTED FOR**
13 **RECONSIDERATION.**

14 On February 17, 2005, the People filed a motion in limine to admit evidence of other acts
15 committed by Spector. Under that separate cover, the facts of the following incidents were set
16 forth in detail and in their entirety. Thus, in an effort towards brevity, only a short recitation of
17 such incidents will be discussed below.

18 Spector has a long history of resorting to gun-related violence to exert his will when he
19 does not get his way. It begins in 1972 and continues to the present.

20 **A. The 1972 Possession of a Loaded Handgun**

21 On January 29, 1972, the Beverly Hills Police Department received an anonymous call
22 from a female who said that a man in a maroon jacket with a karate emblem had pointed a gun at
23 her inside the Daisy Club on Rodeo Drive. According to the report the man had become enraged
24 when the female had attempted to engage him in conversation. The man had not invited the
25 woman to engage him in conversation, and in response he drew a gun and pointed it at her. The
26 man was Spector. Officers noted a bulge underneath Spector's shirt. The officers searched
27 Spector, found a loaded handgun in his waistband, and arrested him.

1 Spector was charged in misdemeanor case number M33439 with carrying a concealed
2 weapon (Pen. Code § 12025) and carrying a loaded firearm in a public place (Pen. Code §
3 12031). Spector pleaded guilty to the violation of section 12031. A condition of his probation
4 was that he not possess any dangerous or deadly weapons.

5 **B. The 1975 Assault at the Beverly Hills Hotel**

6 On November 26, 1975 at about 2:00 a.m., Kevin Brown, a valet employed by the
7 Beverly Hills Hotel, was at work when he heard a woman scream "Get away from me." Brown
8 looked over and saw Spector arguing with a woman near the front door of the hotel. Brown
9 approached and asked what was happening. Spector turned to face Brown, pointed a revolver at
10 his face, and told Brown, "Get the fuck away from me." Brown began to back away from
11 Spector as Chris Dunn, another valet, approached the group. Spector pointed the gun at Dunn
12 before Spector and another man got into a silver Cadillac and drove away.

13 Brown reported the incident to the Beverly Hills Police Department. The Los Angeles
14 County District Attorney charged Spector with two felony counts of assault with a firearm and
15 two misdemeanor counts of brandishing a firearm. In Superior Court, Spector pleaded guilty to
16 one count of misdemeanor brandishing of a firearm. The court placed him on two years of
17 formal probation. A condition of his probation was that he not use or possess any dangerous or
18 deadly weapons.

19 **C. The 1977 Brandishing on Leonard Cohen**

20 In 1977, Spector produced musician Leonard Cohen's record album, "Death of a Ladies
21 Man." During production of the record, Cohen and Spector, who were friends, were taking a
22 break in the lobby of the music studio. Spector walked up to Cohen, placed one arm around
23 Cohen's shoulders, and pointed a semi-automatic pistol at Cohen's chest with his other hand.
24 Spector told Cohen, "I love you Leonard." Cohen looked at Spector and said, "I hope so, Phil."
25 Spector then walked away from Cohen.

26 **D. The 1978 Brandishing on Alan Sacks and Cathy Henderson**

27 In 1978, television producer Alan Sacks, and his assistant Cathy Henderson, arranged to
28 meet with Spector at Spector's Hollywood Hills home to discuss the music for Sacks' television

1 pilot. Sacks and Henderson arrived on time and were let into Spector's house by Spector's
2 bodyguard. The bodyguard locked a metal security gate behind Sacks and Henderson after
3 letting them in.

4 After about an hour, Spector came downstairs and asked Sacks what he was doing in his
5 house. Sacks reminded Spector about their appointment. Spector then asked if Sacks had
6 touched anything on the coffee table. When Sacks told him no, Spector responded, "Good,
7 because there would have been a problem." Spector then told Sacks, "You're here because you
8 want to go back and say I drink and like to play with guns." Spector took off his jacket and
9 Sacks could see that Spector was wearing a shoulder holster containing a handgun.

10 Spector pulled the gun in and out of the holster several times and pointed it at Sacks.
11 Sacks had to push the muzzle of the weapon away from him two or three times. Sacks told
12 Spector he wanted to leave. Spector told him not to worry, that he would get out, but did nothing
13 to let him and Henderson out of the house.

14 Spector then led Sacks and Henderson into another room with a piano. Spector began
15 playing songs on the piano, and again took the gun in and out of the holster several times.

16 Shortly after midnight, Spector finally allowed Sacks and Henderson to leave his house.

17 **E. The 1999 Assault on Debra Strand**

18 During the 1999 holiday season Debra Strand attended a Christmas party in Bel Air with
19 her then-boyfriend, John Silberman. Spector attended the same party.

20 Strand and Silberman left the party and returned to Silberman's home. Spector, a friend
21 of Spector's who knew Strand and Silberman, and Spector's bodyguard also went to Silberman's
22 house. Spector appeared to Strand to be intoxicated.

23 Strand came out of the house's bathroom and saw Spector in the foyer of the house.
24 Spector was flicking cigar ashes on Silberman's golden retriever, Dolly. Strand approached
25 Spector and confronted him. Strand demanded that Spector leave the dog alone. Spector
26 immediately pulled a handgun out of his jacket and placed the muzzle of the weapon against
27 Strand's right cheek. Spector told Strand, "How does this make you feel, bitch?" Strand was
28 terrified that Spector might shoot her. After several seconds, Spector put the gun away.

1 Strand did not report the incident to the police. She was told by other people who
2 witnessed the incident that Spector was very powerful in the music industry.

3 **F. Spector's 2003 Terrorist Threats at Starbucks**

4 In November 2003, nine months after the Clarkson killing, Spector walked into Starbucks
5 coffee house on Fair Oaks Avenue in South Pasadena. John Borowicz was seated outside
6 Starbucks with his friends Andre and Art. As Spector walked out of Starbucks, Andre stood up
7 and said to Spector, "You're Phil Spector."

8 Andre asked Spector to sit down and join them for coffee. Spector told them, "You shit,
9 this interview isn't authorized," and "You fat fuck, I'm gonna go get my gun and blow you fat
10 fucks away."

11 Spector's driver approached Spector and walked him back to the black Mercedes sedan
12 parked in front of the Starbucks. The driver and Spector argued at the rear door of the Mercedes
13 before Spector got into the back seat. The driver got behind the wheel, backed the Mercedes out
14 of the parking stall and eventually left.

15
16 **ARGUMENT**

17 **I. CALIFORNIA EVIDENCE CODE SECTION 1101(b) PERMITS**
18 **EVIDENCE OF UNCHARGED CRIMES TO PROVE RELEVANT FACTS**
19 **OTHER THAN THE DEFENDANT'S CRIMINAL DISPOSITION.**

20 Cal. Evid. Code § 1101(b) makes clear that evidence of "other crimes" or misconduct is
21 admissible when relevant to prove some material fact in issue, such as motive, opportunity,
22 intent, preparation, common plan or design, knowledge, identity, or absence of mistake or
23 accident. However, the list contained in § 1101(b) is not exclusive. *People v. Earley* (2004) 122
24 Cal.App.4th 542, 547. Further, § 1101(b) is not limited to acts committed before the charged
25 offense, but may include both prior and subsequent uncharged crimes when relevant to prove
26 some fact other than disposition. *People v. Balcom* (1994) 7 Cal.4th 414, 425; *People v.*
27 *Shoemaker* (1982) 135 Cal.App.3d 442, 448 n.3. As such, "[t]he admissibility of other crimes
28 evidence depends on (1) the materiality of the facts sought to be proved, (2) the tendency of the

1 uncharged crimes to prove those facts, and (3) the existence of any rule or policy requiring
2 exclusion of the evidence [i.e. Cal. Evid. Code § 352].” *People v. Carpenter* (1997) 15 Cal.4th
3 312, 378-379.

4 When a defendant pleads not guilty to the charges, he puts in dispute all elements of the
5 offense and allegations. *Carpenter* 15 Cal.4th at 379; *People v. Ewoldt* (1994) 7 Cal.4th 380, 400
6 n. 4; *People v. Daniels* (1991) 52 Cal.3d 815, 857-858. This is true even if the defendant does
7 not contest any particular element of the charges at trial. “[T]he prosecution’s burden to prove
8 every element of the crime is not relieved by a defendant’s tactical decisions not to contest an
9 essential element of the offense.” *People v. McGuire* (1991) 502 U.S. 62, 69-70.

10 Finally, if otherwise admissible, evidence of other crimes need only be proved by a
11 preponderance of the evidence, and the trial court’s decision to admit evidence of other crimes
12 will not be reversed on appeal absent an abuse of discretion. *Carpenter* (1997) 15 Cal.4th 312,
13 380-381.

14 **II. THE DOCTRINE OF CHANCES PROVIDES THAT EVIDENCE OF**
15 **SPECTOR’S UNCHARGED GUN-RELATED ASSAULTS ARE**
16 **ADMISSIBLE TO PROVE INTENT.**

17 Of the non-exclusive list of theories for which evidence of uncharged crimes have been
18 deemed admissible under Cal. Evid. Code §1101(b), courts have been most inclined to admit
19 such evidence to prove intent. Primarily, this is because intent requires “the least degree of
20 similarity between the uncharged act and the charged offense.” *People v. Ewoldt* (1994) 7
21 Cal.4th 380, 402 (internal brackets removed). In such cases, an actor’s prior acts have been
22 introduced as circumstantial evidence of that actor’s later intent under the theory of the **doctrine**
23 **of chances**. As explained by Dean Wigmore, “the recurrence of a similar result ... tends
24 (increasingly with each instance) to negative accident or inadvertence or self-defense or good
25 faith or other innocent mental state, and tends to establish (provisionally, at least, though not
26 certainly) the presence of the normal, i.e., criminal, intent accompanying such an act.” *People v.*
27 *Robbins* (1988) 45 Cal.3d 867, 880, quoting 2 Wigmore, *Evidence* (Chadbourn ed. 1979) § 302,
28 p.241. The logic underlying the concept being “the instinctive recognition of that logical process

1 which eliminates the element of innocent intent by multiplying instances of the same result until
2 it is perceived that this element cannot explain them all.” *Id.* at 879. See, *People v. Erving*
3 (1998) 63 Cal.App.4th 652.

4 In *Erving*, the defendant was charged with four counts of arson and three counts of
5 attempt to burn. The trial court admitted evidence that, during the defendant’s lifetime, 40
6 uncharged additional fires occurred in neighborhoods where she had lived. The court reasoned
7 that the defendant “lived in four different, geographically distant neighborhoods. Arson fires
8 regularly occurred either at her home, or within easy walking distance of it. The fires were set
9 during her residency and stopped when she moved.” *Erving* 63 Cal.App.4th at 663. As such,
10 “[t]he doctrine of chances tells us it is extremely unlikely that, through bad luck or coincidence,
11 an innocent person would live so near so many arson fires, occurring so frequently, in so many
12 different neighborhoods.” *Id.*

13 Similarly, in *People v. Kelly* (2007) 42 Cal.4th 763, the defendant was charged with the
14 murder of a 19-year-old woman that he had met at a fitness center, became a personal trainer for,
15 lured to his home, and stabbed to death with a pair of scissors. The California Supreme Court
16 upheld the death penalty conviction of Kelly, finding no error in the admission of evidence of
17 uncharged misconduct, including evidence of the defendant’s financial dealings with other
18 women from the fitness center and evidence of assaults on other women. Specifically, the court
19 found that the defendant “continually lied to and manipulated women including, in particular
20 women who, like [the victim], he befriended at the fitness center. As a specific example of the
21 pattern, he continually led them to believe he came from a wealthy family. He did so
22 consistently to obtain their property. The evidence shows he could be very charming and, at
23 first, convincing. He also continually lured women to his home, where he robbed and raped
24 them.” *Kelly* 42 Cal.4th at 785. After having considered this pattern of uncharged crimes the
25 court reasoned “[i]t would have been a remarkable coincidence if, shortly after the defendant
26 violently assaulted two women he befriended at the fitness center, some different person
27 happened to use that same apartment to assault another woman defendant had befriended at the
28 fitness center.” *Id.* at 786.

1 *Kelly* is directly on point with the case at bar. Drawing from the reasoning in *Kelly*, it
2 would be a “remarkable coincidence” if, after years of the defendant habitually losing his temper
3 and pulling guns on people, the victim, being a complete stranger to the defendant’s house, was
4 the one who introduced Spector’s gun into the situation. It stretches the limits of credence to
5 believe that, though Spector has on countless occasions threatened, assaulted and terrorized
6 individuals with a handgun when he does not get his way, in this one solitary instance it was
7 Lana Clarkson and not Spector who retrieved the gun from his bureau. Indeed, it goes beyond a
8 “remarkable coincidence” that after 40 odd years of gun-related violence, Spector would
9 haplessly end up alone in the room with Lana Clarkson when she happened to choose to kill
10 herself, as the defense would have the jury believe. The doctrine of chances firmly provides that
11 the prosecution can present evidence to the jury to squarely prove that the defendant intended to
12 introduce the gun into the situation. By extension, such evidence proves that it was he who
13 possessed the gun at the time of discharge. Because of the overwhelmingly compelling and
14 probative nature of such evidence, it is admissible under the doctrine of chances.

15 **III. EVIDENCE OF SPECTOR’S UNCHARGED GUN-RELATED ASSAULTS**
16 **ARE ADMISSIBLE TO PROVE COMMON DESIGN OR PLAN, OR PUT**
17 **ANOTHER WAY, TO SHOW MODUS OPERANDI.**

18 Under the rubric of Cal. Evid. Code § 1101(b), evidence of uncharged crimes is also
19 admissible to prove a common plan or design. *People v. Dancer* (1996) 45 Cal.App.4th 1677,
20 1688; *Ewoldt* 7 Cal.4th 380 at 393, 399. Yet, while the words “common plan” or “common
21 design” may suggest a single continuing plot to commit a series of connected crimes, the
22 California Supreme Court has specifically rejected such a restrictive approach. *Ewoldt* 7 Cal.4th
23 at 399, 401; *People v. Castillo* (1997) 53 Cal.App.4th 416, 426. Instead, common plan or design
24 is more accurately seen simply as a similar “modus operandi” pursuant to which the defendant
25 commits a series of similar, though not connected, nor “distinctive or unusual” acts. *Ewoldt* 7
26 Cal.4th at 399, 403. Rather, the uncharged acts must show “such a concurrence of common
27 features that the various acts are naturally to be explained as caused by a general plan of which
28 they are the individual manifestations.” *Kelly* 42 Cal.4th at 784.

1 In *People v. Branch* (2001) 91 Cal.App.4th 274, the defendant was charged with
2 committing a lewd and lascivious act upon a child under 14 and using a foreign object to
3 penetrate. The trial court admitted evidence, under Cal. Evid. Code § 1101(b), that the defendant
4 committed similar, but uncharged, offenses against his step-daughter more than 30 years prior to
5 the current charges. Despite the fact that they were separated by a substantial period of time and
6 despite the fact that the acts were dissimilar in manner (touching over the clothes versus digital
7 penetration in the prior act), the court nevertheless found that the prior offense was “highly
8 probative in establishing [the defendant’s] use of a common scheme and plan with both victims.”
9 *Branch* 91 Cal.App.4th at 283.

10 Thus, the *Branch* court reasoned that the defendant’s “plan” to molest the victim was
11 “manifested” some 30 years earlier when he molested his step-daughter. Evidence of that
12 “common plan,” or modus operandi, was highly probative on the issue of guilt or innocence of
13 the charged crime. (See also, *Dancer* Cal.App.4th at 1690 [earlier molestation sufficiently
14 similar to charged child molestation to show common plan or design despite passage of 11 years,
15 difference in age of the victims (13 months, as opposed to kindergarten-aged), access to the
16 victims (living with the victim, as opposed to living in the same apartment building), and
17 location of the molestation (bedroom, as opposed to garage)].)

18 In the instant case Spector has developed a distinguishable modus operandi, repeated
19 time and again over a period of decades, under differing environments and against different
20 kinds of victims, whereby he will threaten, assault or terrorize with a handgun any individual
21 who is a perceived threat or challenge to his control. Following the *Branch* court’s reasoning,
22 Spector’s “plan” to resort to gunplay when he does not get his way is “individually manifested”
23 by each incident in which he has done exactly that in the past. Logic compels the conclusion that
24 his “plan” was most recently “manifested” in his foyer when Lana Clarkson decided to leave and
25 he perceived a challenge to his control. This pattern of behavior falls squarely within the
26 purview of § 1101(b) and the supporting case law, and should be admissible as such.
27
28

1 **IV. EVIDENCE OF SPECTOR'S UNCHARGED GUN-RELATED ASSAULTS**
2 **ARE ADMISSIBLE TO SHOW IDENTITY.**

3 When the issue is identification, “the uncharged misconduct and the charged offense
4 must share common features that are sufficiently distinctive so as to support the inference that
5 the same person committed both acts.” *Ewoldt* 7 Cal.4th at 403. When Spector plead not guilty
6 to the charge he is now accused of, he put in dispute all elements of the offense murder,
7 including identity. *Carpenter* 15 Cal.4th at 379; *People v. Ewoldt* (1994) 7 Cal.4th 380, 400 n. 4;
8 *People v. Daniels* (1991) 52 Cal.3d 815, 857-858. Additionally, “the prosecution’s burden to
9 prove every element of the crime is not relieved by a defendant’s tactical decision not to contest
10 an essential element of the offense.” *People v. McGuire* (1991) 502 U.S. 62, 69-70. Moreover,
11 Spector has put the issue of identity directly in dispute by alleging that he was not holding the
12 gun when Lana Clarkson was shot in the mouth. As such, this entire question before the jury has
13 essentially become **who** the person was holding the gun at the time of Lana Clarkson’s death.

14 “To be relevant on the issue of identity, the uncharged crimes must be highly similar to
15 the charged offense.” *People v. Kipp* (1998) 18 Cal.4th 349, 369. However, it has long since
16 been held that even a single “common mark,” if sufficiently distinctive, may allow the inference
17 of identity, and admissibility of other crimes evidence is proper. *People v. Haston* (1968) 69
18 Cal.3d 233, 244.

19 In *People v. Gordon* (1990) 50 Cal.3d 1223, the defendant and his two brothers were
20 charged with the murder of an armored-car courier during a robbery near a K-Mart store. It was
21 the prosecution’s theory that the defendant was the getaway driver. The issues in dispute were
22 identity, intent, and degree of the defendant’s participation. *Id.* at 1233-1234. To prove the
23 defendant was the getaway driver, the trial court allowed the prosecution to introduce evidence
24 of an uncharged robbery-murder that occurred 13 months before the charged crimes. In the
25 uncharged robbery-murder, defendant was also the getaway driver for his two brothers who
26 killed another armored-car courier. *Id.* at 1234-1235. The court found that the uncharged
27 robbery and the charged offense were sufficiently similar in the manner in which they were
28 carried out (two armed assailants and one waiting driver), and similar in the weapons and vehicle
 used, leading to the conclusion that the “distinctive combination of circumstances between the

1 [prior robbery] and [the charged robbery] shows, without resort to disposition, that the
2 perpetrators were the same persons and that they acted with the same intent.” *Id.* at 1240.

3 In the instant matter, Spector has alleged that of the two people in his foyer on the night
4 of Lana Clarkson’s death, he was not the one holding the murder weapon. This would be one
5 instance, amongst more than a dozen, spanning the last 40 plus years, in which Spector would
6 not be the individual brandishing one of **his own** weapons. In every other instance referred to
7 herein, there is a “distinctive combination of circumstances” that ultimately leads to Spector
8 resorting to a gun. Those circumstances manifest themselves when Spector doesn’t get his way,
9 perceives a challenge to his control, and decides to exert his control over others. As exhibited in
10 the following:

11 1) In the Daisy Club incident, Spector was offended that a woman spoke to him without
12 being invited to do so. He immediately exerted his control over the woman and the situation by
13 pulling a gun on her and pointing at her abdomen. 2) In the Beverly Hills Hotel incident, Spector
14 perceived that he lost control over an argument with a woman when a valet interrupted. He was
15 offended that the valet butted into his argument, and he immediately exerted his control over the
16 situation by pulling a gun on the valet. 3) With Leonard Cohen, Spector desired an affirmation
17 of affection or love from Cohen, and in order to immediately exert control over Cohen in order to
18 get his way, Spector pulled a gun on him. 4) In the Sacks and Henderson incident, Spector
19 perceived that they ulterior motives for being at his house and further perceived that he was
20 being deceived by them. In order to gain the upper hand and regain control over the situation,
21 Spector introduced a gun, in his mind subjecting the couple to his will. 5) In the Debra Strand
22 incident, Strand angrily confronted Spector at a party after Spector dropped cigar ash on her dog.
23 Spector immediately turned the table to regain control over the situation by pulling a gun and
24 pointing it at her face. And 6) in the Starbuck’s incident, Spector perceived that he had been
25 duped by patrons at the coffee shop into an unauthorized interview, thereby calling into question
26 his status and authority and control. He immediately answered the perceived slight by telling the
27 patrons that he would “go get his gun” and “blow [them] away” again resorting to a firearm in
28 order to maintain control over others.

1 In every instance, the “distinctive combination of circumstances,” to wit, a perceived
2 loss of control or not getting his way, an attempt to maintain or regain control over others, and an
3 immediate resort to a gun, appears in a predictable pattern-like fashion. This evidence of other
4 instances in which Spector, under similar circumstances, either threatened, assaulted and/or
5 terrorized individuals with a handgun, would both meet the test for similarity, and support the
6 inference that it was Spector and not Ms. Clarkson who was holding the murder weapon at the
7 time of her death.

8
9 **V. THE DOCTRINE OF CORROBORATION PROVIDES INDEPENDENT**
ADMISSIBILITY OF OTHER CRIMES EVIDENCE.

10 The California Supreme Court has held that “evidence of other crimes that meets the
11 similarity requirement for evidence of a common design or plan is also admissible under
12 Evidence Code section 1101 to corroborate the complaining witness.” *People v. Balcom* (1994)
13 7 Cal.4th 414. Closely akin to the doctrine of chances, discussed above, is the **doctrine of**
14 **corroboration**, which was discussed at length in the concurring opinion of *Balcom*. *Balcom* was
15 charged with rape, burglary and robbery. After conviction on the robbery count, the defendant
16 was retried on the rape count only. The trial court ruled, and the California Supreme Court
17 affirmed, that evidence could be admitted tending to establish that defendant had committed a
18 rape and robbery in another state less than two months after the charged offense. In allowing for
19 the admission of testimony concerning the other rape, the court reasoned “[i]f a person claims the
20 defendant committed rape, and the defendant denies it, the complaining witness might be lying.
21 If, however, two people claim rape, and if their stories are sufficiently similar, the chance that
22 *both* are lying, or that one is truthful and the other invented a false story that just happens to be
23 similar, is greatly diminished. The jury can reasonably, and quite properly, infer that it is more
24 likely both are truthful.” *Balcom* 7 Cal.4th at 428 (italics in original).

25 In this case, the truthfulness of the 1101(b) witnesses is a central issue to the case. The
26 defense has consistently leveled accusations of lying against each of the witnesses. Those
27 accusations continue even today. (See, Defendant’s Opposition to the Prosecution’s Motion to
28 Admit the Uncharged Incident Testimony of Norma Kemper, p. 6, ln. 27 to p. 7, ln. 1, *stating*,

1 “As the prosecution’s own evidence and argument made clear, the various uncharged incidents,
2 at most a half dozen occurring over a thirty year period (*if they occurred at all*) ... (italics
3 supplied). But here we have not one or two witnesses, but over a dozen entirely independent
4 witnesses going back some four decades, who describe a nearly identical set of circumstances,
5 each cross-corroborating the other, to show a history of gun related violence on Spector’s part.
6 As such, the *Balcom* court reasoned “[t]he more similar, and the more independent, the two
7 accounts are, the greater the strength of the corroboration.” *Balcom* 7 Cal.4th at 428. It also
8 follows that the more *numerous* the accounts are, the greater the strength of the corroboration. If
9 the court were to limit the cross-corroborating witnesses, each of whom independently describe
10 an incident in which Spector resorts to gunplay in order to maintain control over others, then the
11 People will fall prey to exactly that which *Balcom* provides protection against – specifically an
12 unfounded argument that the witnesses are lying. Limiting the People’s evidence of cross-
13 corroboration would effectively deny the People the opportunity to fortify its witnesses’ veracity
14 and truthfulness. Such a result would be patently unfair. Thus, the case presently before the
15 court goes above and beyond the requirements required of uncharged crimes under the doctrine
16 of corroboration as explained in *Balcom*, and should rightly be admitted.

17
18 **VI. THE PROBATIVE VALUE OF SUCH OTHER CRIMES EVIDENCE IS**
19 **NOT OUTWEIGHED BY ANY PREJUDICIAL EFFECT.**

20 “Evidence of uncharged crimes is inherently prejudicial but may still be admitted if it has
21 substantial probative effect. The matter lies within the discretion of the trial court.” *Carpenter*
22 15 Cal.4th at 380. Pursuant to California Evidence Code section 352, the court may exclude
23 admissible evidence only if “its probative value is substantially outweighed by the probability
24 that its admission ... will create substantial danger of **undue** prejudice.” *People v. Karis* (1988)
25 46 Cal.3d 612, 637 (emphasis added). However, a trial court is vested with wide discretion in
26 determining the admissibility of evidence and its “exercise of discretion under 352 will not be
27 disturbed on appeal absent clear abuse, i.e. unless the prejudicial effect clearly outweighs its
28 probative value.” *Id.* Any prejudice that might flow from relevant and highly probative
evidence is not the kind that requires exclusion under section 352. As stated in *Karis*:

1 [P]rejudice which exclusion of evidence under Evidence Code
2 section 352 is designed to avoid is not the prejudice or damage to a
3 defense that naturally flows from relevant, highly probative evidence.
4 ‘[A]ll evidence which tends to prove guilt is prejudicial or damaging to
5 the defendant’s case. The stronger the evidence, the more it is
6 ‘prejudicial.’ The prejudice referred to in Evidence Code section 352
7 applies to evidence which uniquely tends to evoke an emotional bias
8 against the defendant as an individual and which has very little effect on
9 the issues. In applying section 352, ‘prejudicial’ is not synonymous with
10 ‘damaging.’”

11 *Id.* at 637. (emphasis added).

12 In the context of 1101(b) evidence, the California Supreme Court has weighed several
13 factors in determining whether section 352 requires exclusion of evidence of other crimes
14 including, but not limited to: The tendency of the proffered evidence to demonstrate the
15 existence of the material facts in dispute. Where the tendency is strong, it weighs in favor of
16 admission. *Ewoldt* 7 Cal.4th at 404; see also, *Kipp* 18 Cal.4th at 371. Also, the extent to which
17 evidence of the uncharged crimes is based on a source independent from evidence of the
18 uncharged offense. “The probative value of such evidence would increase further if independent
19 evidence of additional instances of similar misconduct ... were produced.” *Ewoldt* 7 Cal.4th at
20 404-405; see also, *Kipp* 18 Cal.4th at 371.

21 Applying those facts here, it is clear that the probative value of the proffered evidence is
22 not substantially outweighed by undue prejudice. The proffered evidence certainly has a strong
23 tendency to prove the material issues in dispute. Evidence of all 12 incidents (including the 6
24 additional incidents offered under separate cover) comes from independent sources of witnesses.
25 The evidence sought to be admitted here is no less relevant or more prejudicial than that admitted
26 with the Supreme Court’s approval in the cases cited in this motion.

27 Finally, a jury cannot fairly determine the truth of the charges at bar without considering
28 the entire context of Spector’s continuous course of conduct and modus operandi. “Painting a
person faithfully is not, of itself, unfair.” *People v. Harris* (60 Cal.App.4th 727, 737.


1 **V. CONCLUSION**

2 For the reasons set forth above, the People respectfully request that this Court admit
3 evidence of the other crimes included herein pursuant to Cal. Evid. Code § 1101(b).

4
5 Dated: August 11, 2008

Respectfully submitted,

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9 By 

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