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**FILED**

Superior Court of California  
County of Los Angeles

DEC 19 2017

Sherril R. Carter, Executive Officer/Clerk of Court

By Judi Lara, Deputy  
Judi Lara

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**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 THE ESTATE OF JOHNNY MARTINEZ;  
12 ROBERTO MARTINEZ, individually, and as  
13 Successors in Interest to Johnny Martinez;  
14 ANTONIA MARTINEZ, individually, and as  
15 Successor in Interest to Johnny Martinez;  
16 HAILEY ELISE MARTINEZ, a minor by and  
17 through her Guardian ad Litem Evelyn  
18 Valencia and as Successor in Interest to  
19 Johnny Martinez,

Plaintiffs,

vs.

19 COUNTY OF LOS ANGELES, LOS  
20 ANGELES COUNTY SHERIFF'S  
21 DEPARTMENT, SHERIFF JIM  
22 McDONNELL, and DOES 1 through 50,

Defendants.

Case No.: BC579140

(Hon. Michael P. Linfield – Dept. 34)

**DEFENDANT DEPUTY JASON  
ZABALA'S NOTICE OF MOTION AND  
MOTION IN LIMINE No. 13 TO  
EXCLUDE EVIDENCE OF THE  
LITIGATION INVOLVING A  
BYSTANDER IN THE MARTINEZ  
MATTER WHO WAS HIT BY A  
RICOCHET BULLET**

**MIL 13 of 13**

Date: January 29, 2018

Time: 8:30 a.m.

Dept.: 34

Action Filed: April 17, 2015

Trial: January 29, 2018

FSC: January 12, 2018

**TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF  
RECORD: PLEASE TAKE NOTICE** that on January 29, 2018 at the commencement of trial  
in this matter in Department 34 of the Los Angeles Superior Court located at 111 N. Hill St., Los  
Angeles, CA 90012, Defendant Deputy Jason Zabala will and hereby does move the Court for an

**BY FAX**

12/21/2017

1 order *in limine* precluding the parties from seeking to introduce evidence of the litigation brought  
2 by a bystander to this matter who was hit by a ricochet bullet which resulted in a monetary  
3 settlement without an admission of liability. This material is irrelevant and unfairly prejudicial  
4 pursuant to Evidence code section 352.

5 This motion is made following an in person and electronic meet and confer with  
6 Plaintiffs' counsel Ryan Casey of Panish, Shea & Boyle, LLP. Having failed to secure the  
7 stipulation of the parties regarding the requested relief, this motion complies with LASC local  
8 rule 3.25 and the Court's standing order.

9 This motion is made pursuant to this notice, the following memorandum of points and  
10 authorities, the Declaration of Andrew C. Pongracz filed along with these motions *in limine*, the  
11 papers and pleadings already on file in this matter, such matters of which the Court may take  
12 judicial notice, and the arguments of counsel at the time of hearing.

13 Respectfully Submitted,

14 Dated: December 19, 2017

SEKI, NISHIMURA & WATASE, LLP

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17 By: 

GILBERT M. NISHIMURA  
Attorneys for Deputy Jason Zabala

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This is a Wrongful Death case arising out of a police shooting. Plaintiffs (The Estate of  
4 Johnny Martinez and various Successors in Interest) filed a complaint on April 17, 2015.

5 It is undisputed that on October 4, 2014 Defendants, including Deputy Jason Zabala,  
6 responded to a call for service at the Martinez residence in South Los Angeles initiated by a 911  
7 call. In short, the caller reported a stabbing and an ongoing situation at the location. While the  
8 caller mentioned "a crazy guy" (hardly a unique descriptor of criminal activity) the call for  
9 service that ultimately was communicated to the Defendant Deputies did not make any mention  
10 of mental illness. Two units (4 deputies) responded and found the victim at the front of the  
11 property.

12 The Deputies took a short statement and learned that the suspect, Johnny Martinez, was  
13 in the side yard of the property sitting on some steps to the home (legally speaking, the curtilage  
14 of the property). The deputies put together a tactical plan and approached the suspect. Upon  
15 making initial contact, Mr. Martinez cursed at deputies, produced a previously hidden knife and  
16 swung at the deputy closest to him. Deputies then tased Mr. Martinez, but it was ineffective at  
17 incapacitating him. The deputies then used pepper spray in an attempt to subdue Mr. Martinez.  
18 Again, this was ineffective. Shortly thereafter, Mr. Martinez raised his knife and charged at one  
19 of the deputies: prompting the deputies to all fire their service weapons at Mr. Martinez: killing  
20 him. Between the four deputies, there were thirty-six (36) shots fired at Mr. Martinez until the  
21 threat against the life of a fellow deputy was neutralized.

22 At the time of the confrontation Martinez was 28 years old. He appeared shirtless and  
23 was 6'2" and weighed 352 pounds. Deputy Zabala initially fired three (3) rounds from his  
24 department issued handgun at Martinez, fearing for his and his partners' safety. Martinez did not  
25 go down immediately so Deputy Zabala fired three (3) additional rounds at Martinez because he  
26 continued moving toward them. Deputy Zabala's handgun is normally loaded with 17 rounds in  
27 the magazine and 1 round loaded in the chamber for a total of 18 rounds. Deputy Zabala fired a  
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1 total of 6 rounds at Martinez before Martinez eventually fell to the ground. All deputies fired at  
2 Martinez simultaneously.

3 All reviewing agencies found that the shooting was within policy when taking into  
4 consideration the knife attack on a neighbor, the failure of Martinez to obey instructions and  
5 orders from the deputies, the futile use of non-fatal Taser darts and two OC spray bursts, the  
6 threatening movement toward the deputies, and the swinging of the knife at the deputies.

7 Standard policy is that if the circumstances warrant the use by a deputy of his handgun,  
8 the intent should be to shoot to cause a fatality. Shooting the knife out of the suspect's hand or  
9 shooting to only wound are TV/movie scenarios and not reality. This is a tragic incident in  
10 which all deputies acted properly and within policy. Deputy Zabala has had one previous  
11 shooting fatality incident which was found to be justified.

12 Mr. Martinez had never been employed full time and had been diagnosed as a paranoid  
13 schizophrenic. He had been hospitalized previously at Atascadero State Hospital, at County  
14 USC on a 5150 hold and had been a patient at Augustus F. Hawkins Mental Health Center and  
15 County USC.

## 16 **II. FACTS PERTINENT TO THIS MOTION**

17 A bystander to the shooting from which this lawsuit arises made a claim for damages  
18 arising out of injuries sustained by a ricochet bullet. That claim was settled without an  
19 admission of liability. Therefore, it has no evidentiary value to this case and should be excluded  
20 from evidence on grounds that it is irrelevant and unfairly prejudicial pursuant to Evidence Code  
21 section 352.

## 22 **III. SCOPE OF REQUESTED MOTION IN LIMINE**

23 To exclude the parties from seeking to introduce evidence of the litigation brought by a  
24 bystander to this matter who was hit by a ricochet bullet which resulted in a monetary settlement  
25 without an admission of liability. Such evidence is irrelevant to any issues before the court and  
26 is unfairly prejudicial pursuant to Evidence code section 352.

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1 **IV. MOTIONS IN LIMINE GENERALLY**

2 The Court has the inherent power to grant a motion in limine to exclude “any kind of  
3 evidence which could be objected to at trial, either as irrelevant or subject to discretionary  
4 exclusion as unduly prejudicial.” *Clemens v. American Warranty Corp.*, 193 Cal.App.3d 444,  
5 451(2d Dist. 1987); *Peat, Marwick, Mitchell & Co. v. Superior Court*, 200 Cal.App.3d 272, 288,  
6 (1st Dist. 1988). *Evidence Code* Section 352 allows the court to exclude evidence where there is  
7 a substantial danger that the probative value will be outweighed by the danger of undue  
8 prejudice. *See People v. Cardenas*, 31 Cal.3d 897, 904, (1982). *Evidence Code* Section 402  
9 allows the court to hear and determine the question of the admissibility of evidence outside the  
10 presence or hearing of the jury. *See Mizé v. Atchison, T. & S. F. Ry. Co.*, 46 Cal.App.3d 436, 448  
11 (2d Dist. 1975).

12 **V. DISCUSSION**

13 Evidence of the litigation brought by a bystander to this matter who was hit by a ricochet  
14 bullet which resulted in a monetary settlement without an admission of liability has no tendency  
15 in reason to prove any material of fact in this case and should be excluded. That individual was,  
16 as stated, a bystander, standing in a much different position than plaintiffs’ decedent in this  
17 action. Testimony from witnesses regarding such evidence would merely be an attempt to prove  
18 liability in this case because a settlement was reached with an observer to the incident. Because  
19 the circumstances vary greatly between these two individuals, the bystander and plaintiffs’  
20 decedent, such evidence has a high probability of misleading the jury and would be highly  
21 prejudicial to defendant herein. As such, the evidence should be excluded as irrelevant and  
22 prejudicial pursuant to Evidence code section 352.

23 **VI. CONCLUSION**

24 For the foregoing reasons, Deputy Jason Zabala respectfully requests the Court GRANT  
25 his motion in limine, instruct all parties and counsel to inform their clients and witnesses of the  
26 Court’s ruling, and conform their presentation of evidence to such ruling.

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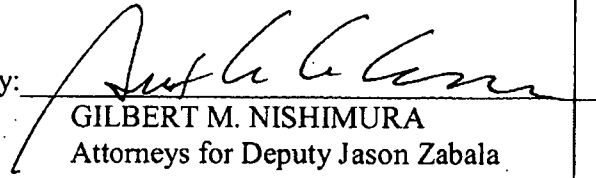
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Dated: December 19, 2017

Respectfully Submitted,

SEKI, NISHIMURA & WATASE, LLP

By:   
GILBERT M. NISHIMURA  
Attorneys for Deputy Jason Zabala

12/21/2017

**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

The Estate of Johnny Martinez et al. v. County of Los Angeles et al.  
LASC Case No. BC579140

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 600 Wilshire Boulevard, Suite 1250, Los Angeles, California 90017.

On **December 19, 2017**, I served the document described as: **DEFENDANT DEPUTY JASON ZABALA'S NOTICE OF MOTION AND MOTION IN LIMINE NO. 12 TO EXCLUDE EVIDENCE OF THE LITIGATION INVOLVING A BYSTANDER IN THE MARTINEZ MATTER WHO WAS HIT BY A RICHOCHET BULLET** on the interested parties in the action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

// (BY MAIL) I placed the envelope for collection and mailing on the date shown above, at this office, in Los Angeles, California, following our ordinary business practices.

I am readily familiar with the office's practice of collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.

// (BY FACSIMILE TRANSMISSION) I caused a true and complete copy of the document described above to be transmitted by facsimile transmission to the telephone number(s) set forth opposite the name(s) of the person(s) set forth above.


/XXX/ (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address(es) listed on the attached service list.

// (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee(s).

// (BY OVERNIGHT DELIVERY) I caused such envelope to be deposited at a station designated for collection and processing of envelopes and packages for overnight delivery service by **FEDERAL EXPRESS**. Such envelope, in the ordinary course of business, is that same day deposited in a box or other facility regularly maintained by **FEDERAL EXPRESS** to receive document(s) in an envelope or package with delivery fees paid.

/XXX/ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **December 19, 2017**, at Los Angeles, California.

  
Stephanie K. Chin

12/21/2017

**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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