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9 Attorneys for Defendant, Los Angeles County Sheriff’s Deputies  
10 Armando Diaz, Scott Erskin, James Krase and Jonathan Pera

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 VELTON LAMONT BOONE, ) CASE NO. CV 10-3418 JST (JCG)  
14 Plaintiff, )  
15 v. ) **DEFENDANTS’ MOTION IN LIMINE # 1,**  
16 ) **TO PRECLUDE EVIDENCE REGARDING**  
17 ) **“OTHER ACTS’ OF FORCE BY THE**  
18 ) **DEFENDANTS; MEMORANDUM OF LAW;**  
19 ) **DECLARATION OF AMBER A. LOGAN**  
20 )  
21 ) Date : May 24, 2013  
22 ) Time: 2:30 p.m.  
23 ) Place: Courtroom 10A  
24 ) Judge: Hon. Joseph Staton Tucker  
25 )  
26 ) Trial Date: May 28, 2013  
27 )  
28 )

TO THE PLAINTIFF AND TO HIS COUNSEL OF RECORD:

Please take notice that on May 24, 2013, at 2:30 p.m. in Courtroom 10A of the United States District Court, located at 411 W. Fourth Street, Santa Ana, California, the Defendants, DEPUTIES ARMANDO DIAZ, SCOTT ERSKIN, JAMES KRASE, and JONATHAN PERA, will move the court In Limine for an order precluding the Plaintiff from offering at the time of trial, evidence, testimony and argument, regarding force incidents, other than the incident involved in this case.

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1 This motion shall be made on the following grounds:

- 2 1. Such evidence is irrelevant to the issue to be tried in this case. F.R.E., Rule  
3 401, 402
- 4 2. "Other acts" evidence is inadmissible. F.R.E., Rules 404(a) and 404 (b).
- 5 3. Such evidence is more prejudicial than probative, would tend to confuse the  
6 jury and would constitute an undue waste of time in this case. F.R.E., Rules  
7 403.

8 This motion shall be supported by this Notice, the Memorandum of Law, the  
9 Declaration of Amber A. Logan, and upon all pleadings and papers on file herein.

10 **MEET AND CONFER REQUIREMENT**

11 On April 18, 2013, defense counsel e-mailed and mailed a letter to plaintiff's  
12 counsel outlining the sum and substance of this prospective Motion in Limine and the  
13 grounds therefore. The letter requested that plaintiff's counsel advise the defense, during  
14 our in-person meeting on April 25, 2013, whether such evidence would be offered. (Ex.  
15 "A"). During the April 25, 2013 -meeting, plaintiff's counsel indicated that the plaintiff  
16 intended to call witnesses to testify regarding a use of force incident which occurred on  
17 May 13, 2009. Therefore, the defendants hereby move to exclude this and any other  
18 evidence of force incidents, except the incident upon which the plaintiff sues.

19 **INTRODUCTORY FACTS**

20 The plaintiff in this case alleges that on April 17, 2008, he was housed as an inmate in  
21 the Los Angeles County jail. The evidence will reflect that the plaintiff was housed in Module  
22 2600/2800 on the 2000 floor of the Men's Central Jail on that date. The plaintiff contends that  
23 he was ordered out of his cell for court call, and contends that Deputies Diaz, Erskin, Krase  
24 and Pera used excessive force upon him without reason, in violation of the Eighth Amendment  
25 to the United States Constitution. The plaintiff was treated at the jail clinic where he  
26 complained of pain in his right shoulder and a bruise to his thigh. The plaintiff filed no inmate  
27 complaint and no internal investigation ensued following the incident.

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1 In response to the plaintiff's request for all documents reflecting use of force or  
2 team takedowns by the deputy defendants, the defendants produced Sheriff's Department's  
3 Internal Affairs Investigation #IV2255921 which involved both Deputies Armando Diaz  
4 and Jonathan Pera (named of other involved deputies were redacted from the documents  
5 produced). That investigation resulted from an incident of May 13, 2009. Deputy "K"<sup>1</sup>  
6 was assigned to provide "tier time" to the inmates in Module 2500 during which, he  
7 witnessed inmate White reach into another cell, then place his hands inside his pockets.  
8 Believing that an exchange of contraband had occurred between inmates, Deputy "K"  
9 approached the inmate to conduct a search. The inmate became combative and started a  
10 fight with deputy "K." Deputy Erskin arrived to assist deputy "K" who was involved in a  
11 fist fight with the inmate. Due to the inmate's size (6"2"; 235 lbs.), Deputy "K" had  
12 difficulty getting the inmate down on his own, and deputy Erskin assisted. As the inmate  
13 fought with both deputies Erskin and "K," deputy "O" ran from the module control booth  
14 to assist. Deputy Diaz heard the commotion as he exited the neighboring module and  
15 arrived to find the inmate on the floor fighting with three deputies who were unable to  
16 contain him. Deputy Diaz radioed for assistance, the tried to control the inmate's legs,  
17 without success. Each of the deputies struck the inmate several times, however, he would  
18 not stop fighting. Deputy "R" responded to the radio call requesting assistance regarding a  
19 "415" fight. He arrived to find four deputies on the ground struggling to contain an inmate.  
20 The inmate was screaming, kicking and swinging wildly at the deputies who were unable  
21 to control or contain him. Deputy "R" deployed his taser to the inmate's buttocks area,  
22 causing the inmate to stop fighting and permitting the deputies to handcuff him. The  
23 inmate was injured during the incident and transported to Los Angeles County U.S.C.

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<sup>1</sup>Deputies named in the investigation, other than the defendants in this case, will be referred to by the first initial of their last name. Deputy "K" is not Defendant Krase, and was not involved in the incident alleged by the plaintiff.

1 Medical center for treatment. Deputies “O” and Diaz were injured in the incident and  
2 treated at White Memorial Hospital.

3 **GROUND FOR MOTION**

4 The defendants believe that at the time of trial, the plaintiff may attempt to offer  
5 testimony, evidence or argument regarding incident with Inmate White on May 13, 2009.  
6 This evidence is inadmissible, improper character evidence, and far more prejudicial than  
7 probative. As such, the evidence must be precluded.

8 **POINTS AND AUTHORITIES**

9 **I.**

10 **EVIDENCE REGARDING FORCE INCIDENTS, OTHER THAN THAT**  
11 **INVOLVING THE PLAINTIFF’S APRIL 17, 2008 -INCIDENT, IS IRRELEVANT**  
12 **TO THIS ACTION AND MUST BE EXCLUDED**

13 “Evidence is relevant if:

14 (a) it has any tendency to make a fact more or less probable than it would be  
15 without the evidence; and (b) the fact is of consequence in determining the action.” F.R.E.,  
16 Rule 401. Rule 402 provides that “irrelevant evidence is not admissible.”

17 In the instant case, the plaintiff filed his initial action under Section 1983, alleging  
18 that deputies Diaz, Erskin, Krase and Pera, acting in their individual capacities, used  
19 excessive force upon him in the Los Angeles County Jail on April 17, 2008. The issue to  
20 be tried in this case is whether the force used by these deputy defendants was excessive and  
21 unreasonable under all the circumstances facing the deputies and whether the defendants  
22 acted maliciously and sadistically for the purpose of causing harm to the plaintiff.

23 Evidence that Deputies Diaz and Erskin assisted another deputy in restraining an inmate  
24 more than one year after the plaintiff’s incident, has no tendency to make the facts of this case  
25 more or less probable. Moreover, evidence that Deputies Diaz and Erskin assisted another  
26 deputy in restraining another inmate in a separate incident, is of no consequence this action.  
27 The question for the jury’s consideration in this action, is the degree of force used upon the  
28 plaintiff on April 17, 2008 and whether the force was Constitutionally permissible.

1 Evidence regarding force incidents other than that involving the plaintiff is  
2 irrelevant and therefore inadmissible.

3 **II.**

4 **“OTHER ACTS” EVIDENCE IS INADMISSIBLE**

5 “Evidence of other crimes, wrongs, or acts is not admissible to prove the character  
6 of a person in order to show action in conformity therewith.” F.R.E., Rule 404 (b).

7 “Evidence of a person’s character or a trait of character is not admissible for the purpose of  
8 proving action in conformity therewith on a particular occasion.” F.R.E., Rule 404 (a).

9 Rule 404 prevents the admission of evidence of a person’s character for the purpose  
10 of proving that the individual acted in conformity with that character on a particular  
11 occasion. Cohn v. Papke, 655 F.2d 191, 183-94 (9<sup>th</sup> Cir. 1991). Nor may such evidence be  
12 admitted to show a propensity or proclivity to commit bad acts. United States v.  
13 Arambula-Ruiz, 987 F.2d 599, 605 (9<sup>th</sup> Cir. 1993).

14 In the instant case, evidence that deputies Diaz and Erskin were involved in a  
15 subsequent force incident involving another inmate on another occasion, constitutes  
16 improper character evidence offered only to show evidence that they acted in conformity  
17 with their character, or that they have a proclivity to commit certain acts. As such, the  
18 evidence is impermissible under Rule 404, and must be excluded.

19 **III.**

20 **EVIDENCE REGARDING FORCE INCIDENTS, OTHER THAN THOSE**  
21 **INVOLVING THE PLAINTIFF’S CLAIM OF APRIL 17, 2008, MUST BE**  
22 **EXCLUDED UNDER RULE 403**

23 Even relevant evidence may be excluded if its probative value is substantially  
24 outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay and  
25 waste of time. F.R.E., Rule 403.

26 In Duran v. City of Maywood, 221 F.3d 1127 (9<sup>th</sup> Cir 2000), Plaintiffs filed a civil  
27 rights lawsuit against the City of Maywood and its officers, after Officer Curiel shot and  
28 killed their son. The jury returned a verdict for the defendants and the plaintiffs appealed.

1 On appeal, the Plaintiffs claim that the district court erred when it excluded evidence of  
2 another shooting by Officer Curiel three days after the shooting involving plaintiff's son.  
3 The Ninth Circuit affirmed.

4 The appellate court held that the evidence of a subsequent shooting by Officer  
5 Curiel constituted "other acts" evidence precluded by evidence Code § 404 (b). *Id.* at p.  
6 1133.

7 In the Maywood case, the court determined that evidence that Officer Curiel had  
8 been involved in a subsequent shooting incident was of "marginal" probative value, which  
9 was substantially outweighed by the danger of undue prejudice to the defendants. The  
10 court further held that it would have to conduct "a full-blown trial within a trial" regarding  
11 the subsequent shooting incident.

12 The same is true of this case. First, the May 13, 2009, incident involving inmate  
13 Eric White, is not substantially similar to the incident involving the plaintiff. The Plaintiff  
14 contends that deputies Diaz, Erskin, Krase and Pera, assaulted him for no reason. There  
15 was no taser applied to the plaintiff. The Plaintiff was not transported to the hospital, but  
16 reported to the clinic with complaints of redness to his thigh and pain in his right shoulder.  
17 No deputy was hospitalized after the incident with the plaintiff. The defendant filed no  
18 inmate complaint regarding the incident, and there was no internal investigation which  
19 ensued.

20 In the White incident, which occurred more than one year after the plaintiff's  
21 incident, Deputy Erskin was the first responder to assist Deputy "K" who was engaged in a  
22 fist fight with Inmate White. Deputy Diaz was the fourth deputy to respond. When he did,  
23 he saw that the inmate was engaged in a full-on fight with three other deputies who were  
24 unable to control and handcuff him. Deputy "R" then responded and applied a taser to  
25 White in order to subdue his actions. White was transported to the Hospital for his injuries.  
26 Deputy Diaz and another deputy were also injured and transported to the hospital. These  
27 two incidents are not even remotely similar.

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1 The issue in this case is whether the force used by the deputies in this case was  
2 Constitutionally permissible. Because there are no Monell issues to be tried in this case,  
3 evidence of other force incidents, not involving the incident alleged by the plaintiff could  
4 be offered for no purpose other than to prejudice the trier of fact against the deputies in this  
5 case. Such evidence would not tend to prove whether any particular deputy used an  
6 unconstitutional degree of force upon this particular plaintiff on April 17, 2008.

7 Furthermore, the time required to lay a foundation for, and to prove the facts of the  
8 other incident, would tend to unduly delay the trial and waste time. In defending against a  
9 claim or inference that White was subjected to the use of excessive force, the Defendants  
10 would have to call as witnesses the five deputies involved in the incident, and the internal  
11 affairs investigators who interviewed White and gathered evidence. The defendants would  
12 also offer the medical records to prove up the injuries sustained by the deputies, as well as  
13 the entire internal affairs file. Thus, the admission of this evidence also serves as an undue  
14 waste of time for the issue presented by the plaintiff and a tendency to confuse the jury  
15 regarding the incident which they are to decide.

16 **CONCLUSION**

17 Based on the foregoing, evidence of personnel complaints, internal investigations  
18 and/or discipline involving the defendants is inadmissible and must be excluded.

19 DATED: April 26, 2013

NELSON & FULTON

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By: s / Amber A. Logan  
HENRY PATRICK NELSON  
AMBER A. LOGAN  
Attorneys for Defendants,  
Deputies Diaz, Erskin, Kruse and Pera

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**DECLARATION OF AMBER A. LOGAN**

I, AMBER A. LOGAN, declare that if called and sworn, I would state the following:

1. I am an attorney licensed to practice before all courts of the State of California. I am admitted to practice before the United States District Court for the Central District of California.

2. I am an associate attorney employed by Nelson & Fulton, attorneys for Defendants Deputies Armando Diaz, Scott Erskin, James Krase and Jonathan Pera.

3. On April 18, 2013, I served the plaintiff’s counsel with a letter detailing the Motions in Limine that I was contemplating in this case, and the grounds therefore. A true and correct copy of my April 18, 2013-letter to plaintiff’s counsel sent by e-mail and U.S. mail is attached hereto and incorporated by reference herein as Exhibit “A.”

4. I requested that counsel inform me during our in-person meet on April 25, 2013, whether he intended to offer any of the evidence that I sought to exclude. During that meeting, counsel informed me that he did intend to offer evidence of the May 13, 2009-incident involving inmate Eric White.

5. This motion in limine is offered to preclude the plaintiff from offering testimony and evidence regarding other force incidents involving these defendant deputies.

6. In discovery, the defendants produced the documents pertaining to the sole force incident involving Deputies Diaz and Erskin as ordered by the court.

7. Deputies Krase and Pera had no force complaints or investigations.

8. Deputies Diaz and Erskin had one investigation involving the same incident, Investigation No. IV225921. The sum and substance of that investigation are set forth in the introduction portion of this motion.

9. In order to lay the foundation for the incident involving Inmate White, the defense is prepared to call each of the five deputies involved in the incident, and each of the investigators who interviewed Inmate White. The defense will offer evidence of the injuries sustained by Deputy Diaz and Deputy “O” as a result of the altercation with White.



1 The defense is also prepared to offer evidence to impeach White's credibility, if he is  
2 called to testify regarding the incident.

3 I declare under the penalty of perjury that the foregoing is true and correct.

4 Executed this 26<sup>th</sup> day of April 2013 at Los Angeles, California.

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6 s / Amber A. Logan  
7 AMBER A. LOGAN  
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Henry Patrick Nelson  
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April 18, 2013

Gunnar B. Gundersen, Esq.  
Irell & Manella, LLP  
1800 Avenue of the Stars, Suite #900  
Los Angeles, CA 90067

Via E-Mail & US Mail

Re: Velton Boone v Deputy Diaz, et al.  
USDC Case No. 10-03418 JST (JCG)

Dear Mr. Gundersen:

Although we do not have an order agreeing to our stipulated trial date, I wish to advise you that I intend to file three Motions in Limine in this action.

The first is a motion to preclude evidence of any other force incident involving deputies Diaz, Erskin, Krase or Pera. It is my contention that the issue to be tried in this case is whether the deputies used more force than Constitutionally authorized under the circumstances involving their interaction with Mr. Boone on April 17, 2008. As such, evidence of other force incidents, not involving this case, is irrelevant to this issue, more prejudicial than probative, and constitutes improper character evidence under F.R.E., Rules 401, 403 and 404.

My second motion is to preclude the plaintiff from referring to deputies Diaz, Erskin, Krase or Pera as the "3000 Boys" or any other group or faction. According to the plaintiff's amended complaint, he is under the mistaken impression that the deputy defendants in this action are part of some group, faction or

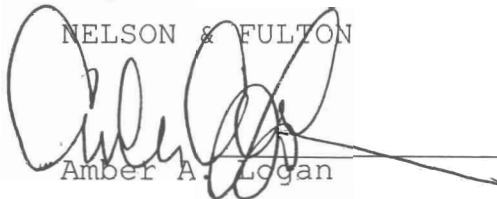
Boone v. Diaz, et al.  
April 18, 2013  
Gunnar B. Gundersen, Esq.  
Page Two

This third motion is to preclude evidence of other incidents within the Los Angeles County Jail, such as that offered in the plaintiff's Motion for Leave to Amend the Complaint. This would include evidence of any reputation that the Los Angeles County Sheriff's Department may have in operating its jails, including the plaintiff's opinion, newspaper articles, and/or the opinions of other witnesses. Such evidence is not relevant to the issue to be tried, is more prejudicial than probative, and is barred by the hearsay rule, pursuant to F.R.E., Rules 401, 403, 801, and 802.

If it is not your intention to proffer any such evidence at the time of trial, please let me know on or before we meet on April 25, 2013.

Regards,

NELSON & FULTON



Amber A. Logan

**Nelson & Fulton**

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**From:** "Nelson & Fulton" <nelson-fulton@nelson-fulton.com>  
**To:** "Gundersen, Gunnar" <GGundersen@irell.com>  
**Cc:** "Roth, Colin" <CRoth@irell.com>; "Amber Logan" <amberlogan@nelson-fulton.com>  
**Sent:** Thursday, April 18, 2013 3:53 PM  
**Attach:** 4-18-13 ltr to counsel.wpd.pdf  
**Subject:** Velton Boone v. Diaz, et al.

Please see attached letter.

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