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16 PEDRO MARTINEZ

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF SAN BERNARDINO**

19 THE PEOPLE OF THE STATE OF  
20 CALIFORNIA,

21 Plaintiff,

22 v.

23 PEDRO MARTINEZ,

24 Defendant.

Case: FVI19000218

**DEFENDANT PEDRO MARTINEZ'  
NOTICE OF MOTION AND MOTION  
PURSUANT TO EVIDENCE CODE  
SECTION 782 TO ADMIT PRIOR  
SEXUAL CONDUCT OF COMPLAINING  
WITNESSES AND DECLARATION OF  
KATHERINE MCBROOM**

Date: May 16, 2023

Time: 8:30 a.m.

Dept.: V3

*[Under Seal Declaration of Katherine C.  
McBroom in Support of Motion filed  
concurrently herewith]*

25 **TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT AND THE**  
26 **DISTRICT ATTORNEY OF SAN BERNARDINO COUNTY AND/OR HIS**  
27 **REPRESENTATIVES:**

28 **PLEASE TAKE NOTICE** that on May 16, 2023 at 8:30 a.m., in Department V3 of the  
above-entitled Court, or soon thereafter as the matter may be heard, Defendant Pedro Martinez


1 (“Mr. Martinez”) will move this Court pursuant to Evidence Code section 782 for an order  
2 admitting the following evidence at trial:

- 3 1. Sexual and physical abuse of Ismael R. by Magdalena Serna (“Ms. Serna”), Ismael  
4 R.’s stepmother and the individual who instigated the investigation of Mr. Martinez;
- 5 2. Sexual abuse of Ismael R. by his former foster parents;
- 6 3. Ismael R.’s sexual and physical abuse of other children;
- 7 4. Ms. Serna’s prior sexual conduct and multiple previous allegations of sexual assault  
8 and molestation, including allegations that a family friend molested her son, Luke,  
9 then four years old and allegations that Ismael R.’s previous foster father molested  
10 Ismael R.
- 11 5. Prior sexual and physical abuse of X’zavier M.;
- 12 6. Ms. Serna’s allegations of “molestation” as an adult against her brother-in-law;
- 13 7. Ms. Serna’s allegations of “molestation” against other family members.

14 This Motion is based on the Points and Authorities attached hereto, the Declaration of  
15 Katherine C. McBroom attached here, the under-seal Declaration of Katherine C. McBroom,  
16 and exhibits thereto, all papers and documents in the Court’s file, and any evidence and/or oral  
17 argument that may be presented at the hearing on this matter.

18 DATED: May 4, 2023

KAEDIAN LLP

19  
20 By: 

21 IAN M. WALLACH  
22 KATHERINE C. MCBROOM  
23 Attorneys for Defendant  
24 PEDRO MARTINEZ  
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1 I.

2 **INTRODUCTION**

3 Defendant Pedro Martinez (“Mr. Martinez”) stands accused of four counts of lewd and  
4 lascivious acts with a child under 14 years of age in violation of Penal Code section 288(a),  
5 two counts of intercourse or sodomy with a child 10 years old or younger in violation of Penal  
6 Code section 288.7(a), four counts of oral copulation or sexual penetration with a child 10  
7 years old or younger in violation of Penal Code section 288.7(b), and one count of distributing  
8 or showing pornography to a minor in violation of Penal Code section 288.2(a)(1). The  
9 alleged victims are Ismael R. and X’zavier M.

10 This a life case instigated by Magdalena Serna (“Ms. Serna”), the now stepmother of  
11 Ismael R. Based on Ms. Serna’s entirely unsubstantiated claims that Mr. Martinez sexually  
12 assaulted multiple children at Maple Elementary School, the San Bernardino County Sheriff’s  
13 Department (“SBSD”) interviewed several children (whose names were provided to them by  
14 Ms. Serna, not by either alleged victim). After extensive contact with SBSB deputies and the  
15 children’s guardians concerning possible sexual abuse, Ismael R. and X’zavier M. claimed to  
16 social workers that they were sexually abused by Mr. Martinez. Both children initially denied  
17 abuse to social workers, but after some prodding and suggestive questioning (all available on  
18 videos that have been transcribed) alleged sexual misconduct by Mr. Martinez.

19 Ismael R.’s and X’zavier M.’s claims are inconsistent, contradictory, and, at times,  
20 fantastical.

21 Trial is scheduled for May 22, 2023. Pursuant to the Sixth Amendment of the United  
22 States Constitution and section 782 of the Evidence Code, Mr. Martinez seeks a hearing and  
23 ruling on the admissibility of prior sexual conduct of complaining witnesses Ismael R. and  
24 X’zavier M, as well as witness Magdalena Serna. Specifically, Mr. Martinez seeks to admit:

- 25 1. Sexual and physical abuse of Ismael R. by Ms. Serna, Ismael R.’s stepmother and  
26 the individual who instigated the investigation of Mr. Martinez;  
27 2. Sexual abuse of Ismael R. by his former foster parents;

- 1 3. Ismael R.'s sexual and physical abuse of other children;
- 2 4. Ms. Serna's prior sexual conduct and multiple previous allegations of sexual assault
- 3 and molestation, including allegations that a family friend molested her son, Luke,
- 4 then four years old and allegations that Ismael R.'s previous foster father molested
- 5 Ismael R.
- 6 5. Prior sexual and physical abuse of X'zavier M.;
- 7 6. Ms. Serna's allegations of "molestation" as an adult against her brother-in-law;
- 8 7. Ms. Serna's allegations of "molestation" against other family members.

9 The concurrently filed under-seal declaration of Katherine C. McBroom in support of  
10 this Motion describes in detail the nature and purpose of the testimony, the name(s) of the  
11 witness(es) with personal knowledge of the allegations/instances of sexual conduct, and the  
12 content of the of the testimony to be elicited as to each item of evidence.

13 At trial, the People likely will argue that because the complaining witnesses made  
14 accusations of molestation and/or had knowledge of certain sexual acts, the complaining  
15 witnesses must have been molested by Mr. Martinez. Mr. Martinez did not commit any of the  
16 acts alleged. He has the right to prove an alternative source of knowledge of sexual matter to  
17 rebut the Peoples inference and argument. Specifically, Mr. Martinez has the right to  
18 demonstrate, by use of specific instances, the complaining witnesses' prior exposure to sexual  
19 conduct/molestation, prior allegations of sexual molestation, and participation in sex acts with  
20 others.

21 Further, Mr. Martinez must have the opportunity to demonstrate that the individual who  
22 instigated the criminal investigation, Ms. Serna, has a long history of accusing men of child  
23 molestation, sexual abuse, and rape and has previously accused men of molesting complaining  
24 witness, Ismael R. as well as her minor son, Luke S.

25 While Ms. Serna is not a complaining witness in this case, the defense raises this issue  
26 now to avoid extensive delays during trial. Evidence of Ismael R.'s and X'zavier M.'s prior  
27  
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1 sexual conduct, as well as that of Mr. Serna including prior allegations of sexual abuse and  
2 molestation, is exculpatory and necessary to Mr. Martinez’ defense at trial.

3 **II.**

4 **ARGUMENT**

5 **A. EVIDENCE OF A COMPLAINING WITNESSES’ PRIOR SEXUAL CONDUCT**  
6 **IS ADMISSIBLE TO ATTACK THE COMPLAINING WITNESSES’**  
7 **CREDIBILITY**

8 A defendant accused of sexual misconduct generally may not introduce evidence at trial  
9 of a complaining witness’s past sexual conduct in order to demonstrate consent. (Evid. C., §  
10 1103(c)(1).) Consent is not at issue here. Mr. Martinez did not commit the acts alleged.  
11 Pursuant to Evidence Code section 1103, Mr. Martinez *may* present evidence of complaining  
12 witnesses’ sexual conduct (including during cross-examination) in order to attack their  
13 credibility. (*See* Evid. Code § 1103(c)(3) and (4); *People v. Chandler* (1997) 56 Cal.App.4<sup>th</sup>  
14 703, 711 [“While strictly precluding admission of the victim’s past sexual conduct for  
15 purposes of proving consent, Evidence Code section 1103, subdivision (c)(4), allows the  
16 admission of evidence of prior sexual history relevant to the credibility of the victim.”]; *People*  
17 *v. Blackburn* (1976) 56 Cal.App.3d 685, 689-90.) Once a defendant makes a sworn offer of  
18 proof (filed under-seal) concerning the relevance of the sexual conduct to attack a witness’s  
19 credibility, the protections of section 1103 give way to the procedural safeguards of Evidence  
20 Code section 782.

21 Evidence Code section 782 requires that a defendant seeking to admit evidence of a  
22 complaining witness’s sexual conduct to attack credibility submit a written motion stating that  
23 the defense has an offer to prove as to the substance of the prior sexual conduct and how it is  
24 relevant to the complaining witness’s credibility. (Evid. C., § 782(a)(1).) The motion must be  
25 accompanied by an under-seal affidavit containing the offer of proof. (Evid. C., § 782(a)(2).)  
26 If the Court finds the offer of proof sufficient, it shall hold a hearing outside of the presence of  
27 the jury and allow questioning of the complaining witness regarding the defendant’s offer of  
28 proof. (Evid. Code., § 782(a)(3).) If, after the hearing, the Court finds that the proffered

1 evidence is relevant under Evidence Code section 780 and is not inadmissible under section  
2 352, the Court may order what evidence the defendant can introduce and the scope of  
3 questioning. (*Id.*, see also *People v. Fontana* (2010) 49 Cal.4<sup>th</sup> 351, 362.)

4 Attached to this Motion, and incorporated by reference, is the under-seal Declaration of  
5 Katherine C. McBroom (the undersigned counsel). The declaration, based on information and  
6 belief, is an offer of proof, in compliance with Evidence Code section 782(a)(2), by which  
7 Mr. Martinez seeks a hearing and ruling on the admissibility of the prior sexual conduct of the  
8 complaining witnesses.

9 The declaration is specific – it describes the purpose of the evidence sought to be  
10 admitted, identifies witnesses, and describes the content of the testimony to be elicited. (*See*  
11 *Semsch v. Henry Mayo Newhall Memorial Hosp.* (1985) 171 Cal.App.3d 162, 167; *People v.*  
12 *Schmies* (1996) 44 Cal.App.4<sup>th</sup> 38, 53.) The declaration includes DCFS records, police  
13 reports, deposition transcripts, and witness statements which corroborate the offers of proof.

14 Section 782 simply requires a written motion supported by an affidavit containing “an  
15 offer of proof.” The statute does not require that the declarant have personal knowledge of  
16 the evidence sought to be admitted. (*See People v. Duvall* (1995) 9 Cal.4<sup>th</sup> 464, 485; *City of*  
17 *Santa Cruz v. Mun. Crt.* (1990) 49 Cal.3d 74-86-88.) In *People v. Daggett* (1990) 225  
18 Cal.App.3d 751, the defendant made an offer of proof that the complaining witness had been  
19 molested at age five by two older children and that the complaining witness had juvenile  
20 charges pending against him. *Daggett* ruled that that trial court committed error in refusing to  
21 hold a hearing based on such an offer. The Court stated:

22 Here Daggett’s offer of proof was that he learned from the inspection of the  
23 prosecutor’s file [the complaining witness] told a mental health worker and Doctor  
24 Slaughter that he had been molested by two older children, ages eleven and eight,  
25 when he was five years old. This should have been sufficient for the court to have  
26 ordered a hearing to determine whether the acts of the prior molestation were  
27 sufficiently similar to the acts alleged here. The court erred when it failed to do  
28 so.

(*Id.* at p. 757.) Such an offer of proof could only have been based on information and belief  
of defense counsel who could not possibly have personal knowledge of what the complaining

1 witness told a mental health professional. Based on *Daggett* and *City of Santa Cruz*, the offer  
2 of proof here is sufficient to warrant an Evidence Code § 782 hearing.

3 Mr. Martinez' sole purpose in offering evidence of the sexual conduct of the  
4 complaining witnesses is to attack the credibility and reliability of his accusers. (Evid. Code, §  
5 1101(c).) Mr. Martinez must be permitted, pursuant to the Sixth and Fourteenth Amendments  
6 of the United States Constitution, the corresponding sections of the Constitution of the State of  
7 California, and Section 1103 of the Evidence Code, to present evidence of complaining  
8 witnesses Ismael R.'s and X'zavier M.'s past sexual conduct to refute the inference that  
9 inappropriate sexual knowledge of the children came from Mr. Martinez' alleged misconduct.

10 The law enforcement officers in this matter have testified under oath that there is no  
11 way a child can simply make up or fabricate allegations of molestation. SBSB Detective Tracy  
12 testified at deposition that children never make up stories about sexual abuse and that in her  
13 entire career, "no child has ever made false accusations of sexual abuse." (Declaration of  
14 Katherine C. McBroom, attached here, ¶ 2, Exh. A., Excerpts of Deposition of Detective  
15 Tracy, p. 42:19-43:12.) SBSB Detective LaDuke, in response to a question about the  
16 possibility of a child making false allegations, stated, "But why would you make something up  
17 like that?" (*Id.*, ¶ 3, Exh. B, Excerpts of Deposition of Detective LaDuke, p. 90:2-14.)

18 SBSB LaDuke later commented, "As a matter of fact this guy has been in custody for --  
19 what?—almost four years. And I'm like, is this going to trial? I mean, how does a guy not get  
20 out of custody if he didn't do something so harsh? I mean, we're four years into this, you  
21 know? Like that in itself tells me there's validity to this." (*Id.*, Exh. B., 92:14-20.) Both  
22 detectives assumed early on that the complaining witnesses were being truthful and could only  
23 have gained knowledge of the sexual conduct alleged as a result of Mr. Martinez' misconduct.  
24 The investigation stopped there.

25 Ismael R.'s and X'zavier M.'s DCFS records -- evidence the defense acquired and that  
26 was available to, but never pursued or obtained by, law enforcement -- demonstrate that both  
27 Ismael R. and X'zavier M. had exposure to sexual touching and sexual conduct prior to ever  
28

1 encountering Mr. Martinez. Further, as it relates to Ismael R., DCFS records and interviews  
2 with Ms. Serna's family members, reveal that Ms. Serna has a history of making allegations of  
3 sexual abuse and molestation and that she had been abusive to Ismael R.

4 This evidence counters the inference (articulated by the detectives in deposition) that  
5 knowledge of sexual behavior or sexual touching could only have been the result of Mr.  
6 Martinez' alleged misconduct. Information related to the sexual conduct of the complaining  
7 witnesses, as well as Ms. Serna, is highly relevant to the witnesses' credibility and reliability  
8 and is exculpatory.

9 **B. DUE PROCESS REQUIRES THAT THE DEFENSE BE PERMITTED TO**  
10 **PRESENT AN ALTERNATIVE EXPLANATION OF THE COMPLAINING**  
11 **WITNESSES' SEXUAL KNOWLEDGE**

12 In child molestation cases, the prosecution routinely suggests and argues that the  
13 complaining witness obtained his/her knowledge of sex from the defendant as a result of  
14 molestation. The infamous McMartin case demonstrated quite powerfully that this inference is  
15 not always true. Children can be taught such matters by being repeatedly questioned about  
16 specific sex acts. Further children can learn such matters through previous, unrelated  
17 experiences – for example, molestation by another individual or sexual experimentation with  
18 other children. If the Court does not permit the defense to offer an alternative explanation to  
19 the People's argument that knowledge of sex or the sex acts alleged are due to the molestation  
20 itself, the jury will automatically presume the defendant provided the child knowledge of sex  
21 through the alleged illegal acts.

22 *Daggett, supra*, 225 Cal.App.3d 751, addressed the inherent dangers in presuming a child's  
23 knowledge of sex is attributed to the defendant:

24 A child's testimony in a molestation case involving oral copulation and sodomy  
25 can be given an aura of veracity by his accurate description of the acts. This is  
26 because knowledge of such acts may be unexpected in a child who had not been  
27 subjected to them. In such a case it is relevant for the defendant to show that the  
28 complaining witness had been subjected to similar acts by others in order to cast  
doubt upon the conclusion that the child must have learned of these acts through  
the defendant. Thus, if the acts involved in the prior molestation are similar to the



1 acts of which the defendant stands accused, evidence of the prior molestation is  
2 relevant to the credibility of the complaining witness and should be admitted.  
3 (*Daggett, supra*, 225 Cal.App.3d at 757.) In *Daggett*, the trial court’s failure to allow  
4 defendant to establish the complaining witness’s alternative source of knowledge, compelled  
5 reversal. (*Id.* at p. 758.) Likewise, in *People v. Chandler* (1997) 56 Cal.App.4<sup>th</sup> 703, the court  
6 found the trial court erred by excluding the prior sexual conduct testimony of two witnesses  
7 who testified at the section 782 hearing that they had previously traded drugs for sex with the  
8 complaining witness. (*Id.* at p. 711.)

9 Due process requires that Mr. Martinez be permitted to present evidence of alternate  
10 sources of sexual knowledge.

11 **C. EVIDENCE OF THE WITNESSES’ PRIOR SEXUAL CONDUCT IS NOT**  
12 **MORE PREJUDICIAL THAN PROBATIVE**

13 Courts generally grant wide latitude to defense counsel during cross-examination  
14 challenging the credibility of prosecution witnesses. (*People v. Belmontes* (1988) 45 Cal.3d  
15 744, 780; *Farrell L. v. Sup. Crt.* (1988) 203 Cal.App.3d 521, 526 [“Cross-examination is the  
16 principal means by which the believability of a witness and the truth of his testimony are  
17 tested.”].) “In sex cases, broad cross-examination of the prosecuting witness on prior sexual  
18 experiences, fabrication and sexual fantasy should be allowed.” (*People v. Francis* (1970) 5  
19 Cal.App.3d 414, 417 [internal citations omitted].) “[A]ny evidence that tends to support or  
20 rebut the presumptions of innocence is relevant” because “it is fundamental in our system of  
21 jurisprudence that all of a defendant’s pertinent evidence should be considered by the trier of  
22 fact.” (*People v. Reeder* (1978) 82 Cal.App.3d 543, 550-52 [internal citations omitted].)  
23 “Evidence Code section 352 must bow to the due process right of a defendant to a fair trial and  
24 to his right to present all relevant evidence of significant probative value to his defense.” (*Id.*  
25 at p. 553.)

26 The defense seeks to admit evidence of Ismael R.’s and X’zavier M.’s prior sexual  
27 conduct and abuse for the sole purpose of rebutting the inference that the complaining  
28 witnesses could only have learned of the sexual conduct alleged through Mr. Martinez. It

1 challenges the presumption (which both Detective Tracy and LaDuke hold) that a child would  
2 not and could not falsely accuse a defendant of sexual abuse.

3 A child's previous exposure to sexual conduct, particularly when combined with  
4 suggestive questioning by multiple adults and authority figures, will easily lead to false  
5 allegations. While the subject matter of prior sexual conduct of children is uncomfortable, it by  
6 no means is so prejudicial as to preclude Mr. Martinez from offering a viable defense.  
7 Because the evidence here is far more probative and prejudicial, it should be admitted  
8 following an Evidence Code section 782 hearing.

9 The arguments set forth above are of even greater import in a case, such as this, where  
10 there is not one iota of corroborating non-testimonial evidence, and substantial non-testimonial  
11 evidence that contradicts the inculpatory testimonial evidence.

12 **D. PARENT'S OBSSIVE BEHAVIOR CONCERNING CHILD MOLESTATION**  
13 **IS ADMISSIBLE TO SHOW ALTERNATIVE SOURCE OF SEXUAL**  
14 **KNOWLEDGE**

15 *People v. Scholl* (1964) 225 Cal.App.2d 558 addressed how a parent's obsessive, constant  
16 checking for evidence of molestation could have spurred false accusations and have been a  
17 source of knowledge to the child of sexual conduct. The *Scholl* Court ruled it improper to  
18 prohibit cross-examination on the possible existence of a morbid fear of sexual acts in the  
19 mind of a parent so as to affect the child's knowledge of and familiarity with child  
20 molestation. (*Id.*, pp. 563-64.)

21 [W]e know that, for some [people], the normal concern for the welfare of their  
22 child may take an aggravated form. If the mother is abnormally oriented toward  
23 sexual conduct, and has an abnormal fear of and reaction to sexual relations, she  
24 may, quite unconsciously, build up, in her own mind, a quite innocent act or caress  
25 into a grievous wrong. Young children are especially suggestible. The inquiries  
26 put by such a mother to her daughter may, themselves, implant into the child's  
27 mind ideas and details which existed only in the fears and fantasies of the adult.  
28 Once implanted, they become quite real in the mind of the child witness and are  
impervious to cross-examination.

(*Id.*, p. 563.)

1 Here, Ms. Serna, Ismael R.'s stepmother, has accused a number of men throughout her life  
2 of sexual assault and child molestation and also repeatedly discussed child molestation with  
3 Ismael R. in months prior to the allegations in this case.<sup>1</sup> From approximately September  
4 2018 through January 20, 2019, Serna consistently grilled Ismael R. about whether he been  
5 sexually molested. She convinced herself that Ismael R.'s disturbing and odd behaviors,  
6 including his sexual abuse of another child, were the result of molestation, by a man in  
7 particular. On or about January 20, 2019, in the wee hours of the morning, after several hours  
8 of Ms. Serna interrogating Ismael R., Ismael R. agreed with Ms. Serna's assertions that he had  
9 been abused by a man at school and named other children that had been abused – children who  
10 later denied any misconduct. At Ms. Serna's prompting (she named all of the males working  
11 at the elementary school), Ismael selected a male he knew – the janitor, Mr. Martinez. From  
12 there, a frenzied, panicked, and highly shortsighted investigation of Mr. Martinez was set into  
13 Motion.

14 The evidence concerning Ms. Serna's prior sex abuse allegations and her education and  
15 instruction of Ismael R. in sexual molestation does not fall within the purview of Evidence  
16 Code section 782. Ms. Serna is not a complaining witness. The defense nevertheless raises  
17 this issue now to avoid trial interruption that the defense expects would otherwise occur.

18 **E. COMPLAINING WITNESSES' UNCHARGED ALLEGATIONS FOR**  
19 **PURPOSE OF IMPEACHMENT ARE ISSUE OF WEIGHT, NOT**  
20 **ADMISSIBILITY**

21 The People may argue that a complaining witness's prior allegations may only be  
22 introduced if proven false. *Andrews v. City and County of San Francisco* (1988) 205  
23 Cal.App.3d 938 is instructive in this regard. There, plaintiff alleged that a law enforcement  
24 officer had beaten him. The officer testified during trial that he had a calm disposition. The  
25 trial court in *Andrews* excluded evidence proffered by the defense that the officer's  
26 characterization of himself was false – namely the testimony of inmates. The trial court

27 <sup>1</sup> Testimony of both SBSB Detectives Tracy and LaDuke establish that neither officer believe  
28 that planted memories are possible or exist and that any memories of children only stem from  
the events the children describe, and that such allegations should be accepted at face value.

1 voiced concern that allowing such evidence would result in several mini trials to determine  
2 whether the misconduct alleged against the officer was true. (*Id.* at p. 947.) The appellate court  
3 held that time management concerns were not sufficient to exclude instances of misconduct.  
4 (*Ibid.*) The Court stated, “In every case where prior similar misconduct is admitted, the  
5 defendant may be expected to bring forth a contrary version of events. . . [T]he fact that the  
6 jury must resolve conflicting versions cannot justify the exclusion of all such evidence on this  
7 ground alone.” (*Id.* a p. 987.)

8 Here, as in *Andrews*, whether a complaining witness’s prior allegations of sexual  
9 misconduct against others are true or false is a jury question. DCFS records state that both  
10 Ismael R. and X’zavier M.’s made allegations of a sexual nature against others prior to  
11 claiming abuse by Mr. Martinez (and prior to ever being in contact with Mr. Martinez). The  
12 truth of those allegations is not particularly germane to Mr. Martinez’ defense -- whether true  
13 or false, the allegations suggest prior knowledge of sexual conduct by both complaining  
14 witnesses.

15 **III.**

16 **CONCLUSION**

17 For the reasons stated herein, Mr. Martinez respectfully requests that this Court grant a  
18 Evidence Code section 782 hearing and admit evidence of the complaining witnesses’ prior  
19 sexual conduct at trial.

20 DATED: May 4, 2023

KAEDIAN LLP

21  
22 By: \_\_\_\_\_  
23 KATHERINE C. MCBROOM  
24 Attorney for Defendant  
25 PEDRO MARTINEZ  
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2 whether the misconduct alleged against the officer was true. (*Id.* at p. 947.) The appellate court  
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5 defendant may be expected to bring forth a contrary version of events. . . [T]he fact that the  
6 jury must resolve conflicting versions cannot justify the exclusion of all such evidence on this  
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10 Ismael R. and X’zavier M.’s made allegations of a sexual nature against others prior to  
11 claiming abuse by Mr. Martinez (and prior to ever being in contact with Mr. Martinez). The  
12 truth of those allegations is not particularly germane to Mr. Martinez’ defense -- whether true  
13 or false, the allegations suggest prior knowledge of sexual conduct by both complaining  
14 witnesses.

15 **III.**

16 **CONCLUSION**

17 For the reasons stated herein, Mr. Martinez respectfully requests that this Court grant a  
18 Evidence Code section 782 hearing and admit evidence of the complaining witnesses’ prior  
19 sexual conduct at trial.

20 DATED: May 4, 2023

KAEDIAN LLP

21  
22 By:



23 KATHERINE C. MCBROOM  
24 Attorney for Defendant  
25 PEDRO MARTINEZ  
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**DECLARATION OF KATHERINE C. MCBROOM**

I, Katherine C. McBroom, declare as follows:

1. I am an attorney duly admitted to practice law in the State of California and am an attorney for Defendant Pedro Martinez (“Mr. Martinez”) in the above-entitled matter. I make this declaration in support of Mr. Martinez’s Motion to Admit Evidence of Prior Sexual Conduct Pursuant to Evidence Code section 782.

2. Attached here as Exhibit A are excerpts of San Bernardino County Sheriff’s Detective Tracy’s deposition testimony in the matter of *Billy Roe, et al. v. Hesperia Unified School District, et al.*, Case No. CIVDS1904175.

3. Attached here as Exhibit B are excerpts of San Bernardino County Sheriff’s Detective LaDuke’s deposition testimony in the matter of *Billy Roe, et al. v. Hesperia Unified School District, et al.*, Case No. CIVDS1904175.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4<sup>th</sup> day of May 2023, at Los Angeles, California.

  
KATHERINE C. MCBROOM

# EXHIBIT A

1 Okay. Would it change your view of the nature of the  
2 conversation between (Billy Roe) and (Jennifer Roe)  
3 and Serna to learn that Miss Serna herself has been  
4 the victim of sexual abuse?

5 A No.

6 MR. MANOUKIAN: Objection. Incomplete  
7 hypothetical.

8 BY MS. GRAY:

9 Q Would it make a difference to you that the  
10 person who was speaking to the child to get his  
11 version of the events of the abuse had herself had a  
12 bias about sex abuse?

13 A No.

14 MR. MANOUKIAN: Same objection.

15 BY MS. GRAY:

16 Q Why not?

17 A Because it has -- it doesn't have to do with  
18 her. It's the child.

19 Q Well, let's try it this way. Sergeant, you  
20 believe that children, children don't make up stories  
21 about sexual abuse?

22 A Correct.

23 Q You believe that?

24 A They don't make up.

25 Q They don't?





1 A No.

2 Q Yes. You told Mr. Martinez which I said  
3 that?

4 A Right.

5 Q Yes. And you've never had a case where a  
6 child's accusations were false?

7 A No, I have not.

8 Q How many child sex abuse cases have you  
9 handled in the course of your career?

10 A Several.

11 Q Several. What does several mean?

12 A 100.

13 Q Okay.

14 A In my six years approximately.

15 Q Okay.

16 A Give or take.

17 Q 100 or hundreds?

18 A No. No. Probably under 100.

19 Q Very good. I don't want to put words in your  
20 mouth?

21 A Right.

22 Q Okay. So with the 100 more or less cases  
23 that you have handled of child sex abuse, none of  
24 them involved a child who was making things up?

25 A No.



# EXHIBIT B

1 you know? I mean --

2 Q How could a child know about sexual conduct at  
3 the age of six?

4 A No. That's pretty easy to see nowadays; right?

5 Q Right.

6 A But, you know, I didn't -- you try to  
7 understand the background from where these kids come  
8 from, and it's saddening because they don't have, like,  
9 that full relationship like maybe you and I had and, you  
10 know, all of us in this room. But that doesn't make  
11 them a bad person, you know, to tell somebody that  
12 somebody is hurting them or causing them problems.

13 Q Or making it up.

14 A But why would you make something like that up?

15 Q So I'm a little confused. Is it your belief  
16 that, if a child victim tells you about an episode of  
17 abuse, that the child is telling the truth because, why  
18 would they make it up?

19 A No, I'm not telling you that, because I have  
20 had situations where it wasn't the truth. But in this  
21 particular situation, you know, the full investigation  
22 that they -- Crimes Against Children did with the  
23 Children's Assessment interview and the full interview  
24 that they received from there, I mean, there's not just  
25 one victim. You have several.

1           So that strikes something strange because  
2       you're like, how could a six-year-old corroborate with  
3       another six-year-old and another six-year-old to make --  
4       paint this picture of a person that's doing harm to  
5       them? Who makes that up?

6           Q     Well, let's try it this way; okay? In this  
7       particular case you only had two of the children whom  
8       you interviewed say that something bad happened to them  
9       by Mr. Pete. You had Charlie Roe, you had David Roe,  
10      and you had Joey, all three of them said nothing  
11      happened. So did you come up with any reasons why X.M.  
12      or Billy Roe might have been telling you something else?

13          A     Again I don't have that documentation in front  
14      of me to tell you what further went on. I don't. I  
15      can't sit here and tell you. But what I can tell you  
16      is, when I've sat with Womelsdorf, I don't recall X.M.  
17      disclosing any sexual behavior at that time; okay? And  
18      again I don't -- I don't remember that.

19          Q     So is it your recollection as we're sitting  
20      here today that none of the children to whom -- to whom  
21      or with whom you spoke exposed any sexual conduct?

22          A     Not that I recall.

23          Q     Okay.

24          A     And that's when I was -- I told  
25      Deputy Womelsdorf -- I said, "We need to get the deeper

1 entity into this involved," and that was Crimes Against  
2 Children. I said, "They do this all the time." They  
3 know -- it's a big -- when you asked me high profile,  
4 this is high profile; okay? We're dealing with a school  
5 official that's alleged of molesting not one child but a  
6 couple of others, supposedly -- right? -- until the crux  
7 of the investigation continued forward and further  
8 statements were made about what happened. I don't know  
9 a whole lot about that, you know, end result.

10 Q So is it fair to say that, after you  
11 interviewed Joey, which was the last thing that you did  
12 on this case, you would have had no further contact  
13 about the case?

14 A I mean, we had updates. As a matter of fact  
15 this guy has been in custody for -- what? -- almost four  
16 years. And I'm like, is this going to trial? I mean,  
17 how does a guy not get out of custody if he didn't do  
18 something so harsh? I mean, we're four years into this,  
19 you know? Like that in itself tells me there's validity  
20 to this.

21 Q The fact that he hasn't been able to make bail  
22 in three and a half years suggests that he's guilty?

23 A No. I'm just saying that I've been through  
24 other cases where -- that I thought were more, whoa, you  
25 know, way up there like -- and they get out.

1  
2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of  
5 eighteen years and not a party to the within action. My business address is 8383 Wilshire  
6 Blvd. Suite 210, Beverly Hills, CA 90211.

7 On May 4, 2023, I served the following document(s) described as: **DEFENDANT  
8 PEDRO MARTINEZ' NOTICE OF MOTION AND MOTION PURSUANT TO  
9 EVIDENCE CODE SECTION 782 TO ADMIT PRIOR SEXUAL CONDUCT OF  
10 COMPLAINING WITNESSES** in this action by placing true copies thereof enclosed in  
11 sealed envelopes and/or packages addressed as follows:

12 Deena Pribble  
13 San Bernardino County District Attorney  
14 14455 Civic Dr Ste 300,  
15 Victorville, CA 92392-2312  
16 Email: dpribble@sbcda.org

17 **BY MAIL:** I deposited such envelope in the mail at 8383 Wilshire Blvd. Suite 210,  
18 Beverly Hills, CA 90211. The envelope was mailed with postage thereon fully  
19 prepaid. I am "readily familiar" with the firm's practice of collection and processing  
20 correspondence for mailing. It is deposited with the U.S. Postal Service on that same  
21 day in the ordinary course of business. I am aware that on motion of the party served,  
22 service is presumed invalid if postal cancellation date or postage meter date is more  
23 than one (1) day after date of deposit for mailing in affidavit.

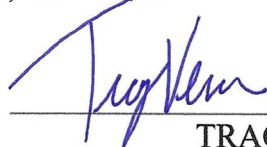
24  **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant  
25 to California Rules of Court. The telephone number of the sending facsimile machine  
26 was (310) 893-3191. The name(s) and facsimile machine telephone number(s) of the  
27 person(s) served are set forth in the service list.

28  **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the  
above addressee(s).

**BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles,  
California, I caused each such document to be transmitted electronically to the  
party(ies) at the e-mail address(es) indicated above. To the best of my knowledge, the  
transmission was reported as complete, and no error was reported that the electronic  
transmission was not completed.

**STATE:** I declare under penalty of perjury under the laws of the State of California  
that the foregoing is true and correct.

Executed on May 4, 2023 at Los Angeles, California.

25  
26 

TRACY VENA