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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT

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

19 THE PEOPLE OF THE STATE OF
20 CALIFORNIA,

Case: FVI19000218

21 Plaintiff,

DEFENDANT PEDRO MARTINEZ'
TRIAL BRIEF AND MOTIONS IN
LIMINE

22 v.

23 PEDRO MARTINEZ,

Date: July 28, 2023

Time: 8:00 a.m.

Dept. V2

24 Defendant.

1 I.

2 **INTRODUCTION**

3 Defendant Pedro Martinez (“Mr. Martinez”) is a 50-year-old man with no criminal
4 history. He is a devoted husband to his wife, Julieta Mondragon-Martinez, and loving father to
5 two children, Xandra Martinez, age 23, and Xavier Martinez, age 26. Based on the allegations
6 of child molestation instigated by witness Magdalena Serna, the now stepmother to complaining
7 witness Ismael R., Mr. Martinez has been locked away from his family for approximately four
8 and half years.

9 After the initial allegations by Ms. Serna, it came to light that Ms. Serna has previously
10 accused multiple individuals of identical conduct and has an unhealthy obsession with the
11 concept of sodomy – previously alleging that the minor Ismael R. was sexually assaulted by
12 students at school and alleging that, prior to the relevant time period in this case, Ismael R. was
13 sexually assaulted by his foster parents. In 2016, she accused a family friend of sexually
14 molesting her then 6-year-old son; the allegations are similar to those in this case. Recently, Mr.
15 Serna faced criminal charges for physical abuse of Ismael R. and maintains that Ismael R. “lies”
16 regarding allegations against her but is truthful regarding *her* allegations against Mr. Martinez.

17 The People claim that in 2018 and 2019, Mr. Martinez, a janitor at Maple Elementary
18 School, molested two students, complaining witnesses Ismael R. and Xzavier B. Both
19 complaining witnesses initially denied abuse to law enforcement and/or social workers, then
20 stated they had been abused after being subjected to repeated leading questions. The misconduct
21 alleged -- as well as the locations of the alleged abuse -- have shifted and changed substantially
22 with every interview. The allegations regarding sexual abuse that eventually emerged were
23 fantastical and simply could not have occurred.

24 Sadly, the government, including the San Bernardino County Sheriff’s Department and
25 District Attorney, with presumably laudable intentions (i.e., protecting children), failed Mr.
26 Martinez as well as the children involved in this case. They have guided two children into false
27 narratives, bent and distorted facts to fit their initial assumption that what Ms. Serna initially
28 reported to law enforcement was true.

1 Mr. Martinez faces 10 counts of child molestation and one count of distributing or
2 showing pornography to a minor. The charges were instigated by Ms. Serna, a woman with a
3 long history of accusations of molestation, rape, and sodomy against family members and
4 acquaintances throughout her life. Based on Ms. Serna's entirely unsubstantiated claims that
5 Mr. Martinez sexually assaulted multiple children at Maple Elementary School, the San
6 Bernardino County Sheriff's Department ("SBSD") interviewed several children (whose names
7 were provided to them by Ms. Serna, not by either alleged victim). After extensive contact with
8 SBSB deputies and the children's guardians concerning possible sexual abuse, Ismael R. and
9 Xzavier B. claimed to social workers that they were sexually abused by Mr. Martinez. Both
10 children initially denied abuse to social workers, but after suggestive questioning, alleged
11 misconduct by Mr. Martinez.

12 Ismael R.'s and Xzavier B.'s claims are inconsistent, contradictory, and, at times,
13 fantastical.

14 II.

15 CHARGES

16 Count 1: PC 288.7(a)

17 The People allege that, on an unknown date, between December 1, 2018 and January 19,
18 2019, Mr. Martinez engaged in sexual intercourse or sodomy against Xzavier B., a child under
19 age 10.

20 No precise date or brief period when the alleged assault could have taken place has been
21 alleged. The defense is not able to discern a time frame within this six-week period as to when
22 the People allege the incident occurred.

23 Count 2: PC 288.7(a)

24 The People allege that, on an unknown date, between December 1, 2018 and January 19,
25 2019, Mr. Martinez engaged in sexual intercourse or sodomy against Xzavier B., a child under
26 age 10.

1 No precise date or brief period when the alleged assault could have taken place has been
2 alleged. The defense is not able to discern a time frame within this six-week period as to when
3 the People allege the incident occurred.

4 Count 3: PC 288.7(b)

5 The People allege that, on an unknown date, between December 1, 2018 and January 19,
6 2019, Mr. Martinez engaged in oral copulation or sexual penetration against Xzavier B., a child
7 under age 10.

8 No precise date or brief period when the alleged assault could have taken place has been
9 alleged. The defense is not able to discern a time frame within this six-week period as to when
10 the People allege the incident occurred.

11 Count 4: PC 288.7(b)

12 The People allege that, on an unknown date, between December 1, 2018 and January 19,
13 2019, Mr. Martinez engaged in oral copulation or sexual penetration against Xzavier B., a child
14 under age 10.

15 No precise date or brief period when the alleged assault could have taken place has been
16 alleged. The defense is not able to discern a time frame within this six-week period as to when
17 the People allege the incident occurred.

18 Count 5: PC 288.7(b)

19 The People allege that, on an unknown date, between December 1, 2018 and January 19,
20 2019, Mr. Martinez engaged in oral copulation or sexual penetration against Xzavier B., a child
21 under age 10.

22 No precise date or brief period when the alleged assault could have taken place has been
23 alleged. The defense is not able to discern a time frame within this six-week period as to when
24 the People allege the incident occurred.

25 Count 6: PC 288.7(b)

26 The People allege that, on an unknown date, between December 1, 2018 and January 19,
27 2019, Mr. Martinez engaged oral copulation or sexual penetration against Xzavier B., a child
28 under age 10.

1 No precise date or brief period when the alleged assault could have taken place has been
2 alleged. The defense is not able to discern a time frame within this six-week period as to when
3 the People allege the incident occurred.

4 Count 7: PC 288(a)

5 The People allege that, on an unknown date, between December 1, 2018, and January 19,
6 2019, Mr. Martinez committed a lewd act on Xzavier B., a child under age 14.

7 No precise date or brief period when the alleged assault could have taken place has been
8 alleged. The defense is not able to discern a time frame within this six-week period as to when
9 the People allege the incident occurred. Additionally, the defense is unable to discern the precise
10 nature of the alleged lewd act.

11 Count 8: PC 288(a)

12 The People allege that, on an unknown date, between December 1, 2018 and January 19,
13 2019, Mr. Martinez committed a lewd act on Xzavier B., a child under age 14.

14 No precise date or brief period when the alleged assault could have taken place has been
15 alleged. The defense is not able to discern a time frame within this six-week period as to when
16 the People allege the incident occurred. Additionally, the defense is unable to discern the precise
17 nature of the alleged lewd act.

18 Count 9: PC 288(a)

19 The People allege that, on an unknown date, between September 1, 2018 and January 18,
20 2019, Mr. Martinez committed a lewd act on Ismael R., a child under age 14.

21 No precise date or brief period when the alleged assault could have taken place has been
22 alleged. The defense is not able to discern a time frame within this five and a half-month period
23 as to when the People allege the incident occurred. Additionally, the defense is unable to discern
24 the precise nature of the alleged lewd act.

25 Count 10: PC 288(a)

26 The People allege that, on an unknown date, between September 1, 2018 and January 18,
27 2019, Mr. Martinez committed a lewd act on Ismael R., a child under age 14.

1 No precise date or brief period when the alleged assault could have taken place has been
2 alleged. The defense is not able to discern a time frame within this five and a half-month period
3 as to when the People allege the incident occurred. Additionally, the defense is unable to discern
4 the precise nature of the alleged lewd act.

5 Count 11: PC 288.2(a)(2)

6 The People allege that, on an unknown date, between September 1, 2018 and January 18,
7 2019, Mr. Martinez distributed or showed pornography to a minor.

8 The People fail to name a complaining witness as to this count and have failed to identify
9 a precise date or discrete time period when the alleged assault could have taken place. The
10 defense is not able to discern a time frame within five and a half-month period as to when the
11 People allege the incident occurred or what in particular was allegedly shown.

12 **III.**

13 **MOTIONS IN LIMINE**

14 Evidence Code section 402, subdivision (b) provides that the Court "may hear and
15 determine the question of the admissibility of evidence out of the presence or hearing of the jury
16 . . ." Below are Mr. Martinez' Motions in Limine.

17 **A. Motion In Limine No. 1 to Exclude Uncharged Misconduct**

18 On March 24, 2023, Mr. Martinez filed and served a Request for Notice of Intent to Offer
19 Proof of Uncharged Misconduct. (See Declaration of Katherine C. McBroom ["McBroom
20 Decl."], ¶ 2, Exh. A, Request for Notice.) The last day for trial is now July 28, 2023. On May
21 30, 2023, Deputy District Attorney Deena Pribble disclosed for the first time, that she intends
22 to call Millie M. as a witness pursuant to Evidence Code section 1108. (*Id.*, ¶ 3, Exh. B, May
23 30, 2023, DDA Pribble Email.) As of the date of this Motion, the People have not disclosed any
24 other potential Evidence Code section 1108 or 1101 witnesses. (*Id.*, ¶ 4.)

25 1. **All Undisclosed Evidence Code Sections 1108 and 1101 Witnesses Should Be**
26 **Precluded at Trial**

27 Evidence Code section 1108, subsection (a) provides that where a defendant is accused
28 of a sexual offense, evidence of defendant's other act or acts of sexual offenses are not rendered

1 inadmissible under Evidence Code section 1101, so long as the evidence is not inadmissible
2 pursuant to Evidence Code section 352.

3 Evidence Code section 1108, subsection (b) provides:

4 In an action in which evidence is to be offered under this section, the people shall
5 disclose the evidence to the defendant, including statements of witnesses or a
6 summary of the substance of any testimony that is expected to be offered in
compliance with Section 1054.7 of the Penal Code.

7 Penal Code section 1054.7 provides:

8 The disclosures required under this chapter shall be made at least 30 days prior to
9 the trial, unless good cause is shown why a disclosure should be denied, restricted,
10 or deferred. . . ‘Good cause’ is limited to threats or possible danger to the safety
11 of a victim or witness, possible loss or destruction of evidence, or possible
12 compromise of other investigations by law enforcement.

13 Mr. Martinez requests that the Court preclude at trial any 1108 or 1101 witnesses whom
14 the People disclosed or seek to disclose in violation of Evidence Code section 1108 and Penal
15 Code section 1054.7.

16 2. Exclusion of Evidence Code Section 1108 Witness Millie M.

17 On May 23, 2023, the People disclosed that they intend to call Millie M. as a witness at
18 trial pursuant to Evidence Code section 1108. Specifically, DDA Pribble references a police
19 report dated January 24, 2019. (*Id.*, ¶ 3.) This police report reflects that Millie M.’s mother saw
20 a January 2019 press release identifying Mr. Martinez as a janitor at Maple Elementary who
21 sexually abused students. She stated that her daughter had been sexually abused by Mr.
22 Martinez in 2016, despite not identifying Mr. Martinez at that time. Thereafter, Millie and her
23 mother, as guardian, filed a civil lawsuit against Maple Elementary and Mr. Martinez seeking
24 monetary damages.

25 Notably, the 2016 investigative report concerning Millie’s initial allegations, drafted by
26 Hesperia School Police Officer Longnecker, states that Millie identified her assailant as a black
27 male with brown or black hair, facial hair, and a tattoo and claimed that the assailant looked
28 under the bathroom stall while she was using the restroom, grabbed her by the wrist when she

1 was washing her hands, and pulled her into the quad area (filled with students and staff), touched
2 her breasts and genitals, and then banged her head into the ground.

3 Mr. Martinez is a bald, Latino man, with no facial hair and no tattoos. Mr. Martinez in
4 no way resembles the assailant described by Millie. Millie now claims that in 2016 she lied to
5 the school, to law enforcement and to her parents concerning the identity of her assailant.

6 *a. The Uncharged Misconduct is Irrelevant*

7 The uncharged misconduct concerning Mille M. is inadmissible because it is not relevant
8 to any issues in the case. "No evidence is admissible except for relevant evidence." (Evid. Code
9 § 350.) Relevant evidence is anything, "having any tendency in reason to prove or disprove any
10 disputed fact that is of consequence to the determination of the action." (Evid. Code § 210.)
11 Seven years ago, Millie M., reported that a black man, with black/brown hair, facial hair, and
12 tattoos sexually assaulted her including touching her over her clothes and banging her head into
13 the concrete. In 2019, upon her mother seeing a press release regarding Mr. Martinez, Millie
14 identified Mr. Martinez as the assailant and thereafter filed a civil action seeking monetary
15 damages. Millie's most recent allegations have no tendency in reason to prove or disprove any
16 disputed fact in this case. Accordingly, Millie M. should be excluded as a witness at trial.

17 *b. The Uncharged Misconduct Is Unduly Prejudicial*

18 Millie M. initially identified her assailant as someone who in no way resembles Mr.
19 Martinez and only changed her story after her family viewed the press release in this case and
20 saw the potential for financial gain (she is a party to the related civil action). Millie M.'s story
21 is not credible in any respect. Her testimony will only serve to confuse and mislead the jury and
22 unfairly prejudice Mr. Martinez under Evidence Code section 352. By its incorporation of
23 Section 352, Section 1108, subdivision (a) makes evidence of other sexual offenses inadmissible
24 if the court determines that its probative value is "substantially outweighed" by its prejudicial
25 impact. (*People v. Falsetta* (1998) 21 Cal.4th 908, 917-18.)

26 When considering whether to admit 1108 evidence, factors relevant to the Court's
27 analysis under Section 352 include:

- 28 (1) the inflammatory nature of the evidence;

- 1 (2) the probability of confusion if the prior acts did not result in a criminal conviction;
- 2 (3) the remoteness in time of the uncharged act from the charged offenses;
- 3 (4) undue consumption of time; and
- 4 (5) the probative value of the evidence, including a consideration of the degree of similarity of the prior and current offenses.

5 (*People v. Harris* (1998) 60 Cal.App.4th 727, 740; *Falsetta, supra*, 21 Cal.4th at 917.)

6 As noted in *People v. Karis* (1988) 46 Cal.3d 612, 638, the “prejudice” referred to in
7 Evidence Code section 352 “applies to evidence which uniquely tends to evoke an emotional
8 bias against the defendant as an individual and which has very little effect on the issues.” Such
9 is the case here. Millie M.’s prior allegation of abuse has no bearing on the acts at issue and
10 serves only to paint Mr. Martinez as a predator. Additionally, the probability of juror confusion
11 is high. Millie M. very specifically described an assailant who in no way, shape, or form
12 resembles Mr. Martinez, then four years later changed her story once the possibility of monetary
13 compensation became an option.

14 While the defense certainly can, and will if put in the position, impeach the witness with
15 obvious inconsistencies and unsavory motives for identifying Mr. Martinez, the very fact that a
16 child is making an allegation of sexual abuse and now blaming Mr. Martinez is both disturbing
17 and confusing. On top of that, Mr. Martinez was never charged (or even investigated) regarding
18 the misconduct Millie M. alleges. Where a prior offense did not result in a conviction, the
19 likelihood of confusing the issues increases because the jury must determine whether the
20 uncharged offense in fact occurred.

21 Here it is unclear whether Millie M. was ever assaulted, let alone by Mr. Martinez. The
22 evidence serves only as a distraction and vehicle to paint Mr. Martinez as a bad person.

23 **B. Motion In Limine No. 2 to Exclude Testimony of All Prosecution Experts**

24 Pursuant to Penal Code section 1054.1(f), the People are required to disclose all relevant
25 written or recorded statements of witnesses or reports of statements of witnesses whom the
26 People intend to call at trial, including any reports or statements of experts made in conjunction
27 with the case, including the results of physical or mental examinations, scientific tests,
28 experiments, or comparisons which the prosecutor intends to offer in evidence at that trial.

1 The People are required to disclose all statements, including statements made during
2 interviews of potential witnesses, even if the interviews were never reduced to writing. (*Roland*
3 *v. Super. Ct.* (2004) 124 Cal.App.4th 154, 166-67.) Accordingly, the People must convey each
4 witness' statement in order for the defense to prepare for the anticipated testimony.

5 The People are required to make such disclosures no less than 30 days before trial. Penal
6 Code section 1054.7 provides:

7 The disclosures required under this chapter shall be made at least 30 days prior to
8 the trial, unless good cause is shown why a disclosure should be denied, restricted,
9 or deferred. . . 'Good cause' is limited to threats or possible danger to the safety
10 of a victim or witness, possible loss or destruction of evidence, or possible
11 compromise of other investigations by law enforcement.

12 The People's duty to disclose any and all exculpatory evidence pursuant to Penal Code
13 section 1054.1(e), is not limited to material evidence or evidence the People deem material. (*See*
14 *Barnett v. Sup. Ct.* (2010) 50 Cal.4th 890, 901; *People v. Lewis* (2015) 240 Cal.App.4th 257,
15 266.)

16 On April 4, 2023, nearly *three months before the trial date (prior to the continuances*
17 *ordered under Penal Code Section 1050(g)*, the defense disclosed to the People each of their
18 proposed experts with CVs, fee schedules, and contact information as well as a summary of their
19 expected testimony. (McBroom Decl., ¶ 5, Exh. C, April 4, 2023 Email.)

20 On June 23, 2023, pursuant to DDA's Pribble's request for additional information
21 concerning the defense's proposed *Stoll* expert, Dr. Richard Romanoff, the defense sent an email
22 to DDA Pribble clarifying the bases for his opinion that Mr. Martinez does not exhibit any signs
23 of or have characteristics suggesting sexual deviance. (*Id.*, ¶ 6, Exh. D, June 23, 2023 Email.)
24 The defense also invited DDA Pribble to reach out to Dr. Romanoff directly with any further
25 questions. (*Ibid.*)

26 On May 28, 2023, DDA Pribble disclosed four experts she intends to call at trial. She
27 provided CVs for each but failed to identify to what each is expected to testify. (*Id.*, ¶ 7, Exh.
28 E, DDA Pribble's May 28, 2023 Email.) Rather, DDA Pribble simply summarized to what
"these experts" will generally testify. Specifically, DDA Pribble states:

1 [T]hese experts will testify as to Child Sexual Abuse Accommodation Syndrome
2 (CSASA) as well as “battered person syndrome, counterintuitive victim behaviors,
3 forensic interviewing of children, autobiographical and traumatic injury, and the
4 psychology behind children’s memory and suggestibility.”

5 (*Ibid.*) This was the entirety of the Prosecution’s expert disclosure.

6 This disclosure is not compliant with Penal Code section 1054.1(f). As it stands, the
7 defense is left to wonder to what area of expertise (of 6 areas mentioned) each of the four
8 experts will testify at trial. To date the defense has not received any response to its May 29,
9 2023, email requesting further information in compliance of Penal Code section 1054.1(f).

10 (*Id.*, ¶ 8, Exh. F, May 29, 2023 Email.) Specifically, the defense informed DDA Pribble of the
11 following:

12 You have not provided any information allowing one to discern which expert will
13 testify as to what opinion. You have not informed the defense as to who will
14 testify to what. Cal. Pen. Code Sec. 1054.1(f) requires, at a bare minimum, that
15 the noticed party be informed as to who will testify and what that specific expert’s
16 opinion will be. Please let us know promptly if you disagree. As you are aware,
17 the defense has already complied with its similar obligation. This demand is meant
18 to ensure compliance with your obligations under, inter alia, Cal. Pen. Code Sec.
19 1054.1(f) and is not a waiver of other available objections or responses.

20 (*Ibid.*)

21 The People have failed to comply with basic discovery obligations. As is stands, Mr.
22 Martinez cannot adequately prepare for cross-examination of the People’s experts. Further,
23 based on the People’s noncompliance, Mr. Martinez has been denied a reasonably opportunity
24 prior to trial to consult with his own experts and potential rebuttal experts to address the opinions
25 of the People’s experts. The defense is at a tremendous disadvantage – the People are aware how
26 each defense expert is expected to testify and any opinions the defense expects to present, while
27 the defense is in the dark.

28 This disadvantage was substantially increased when, on July 14, 2023, at the People’s
request, the defense was ordered to provide detailed statements of each expert witness setting
forth every document relied on and position that will be taken, even if not based on factual
evidence in the present case, but did not make the same requirement of the People. The defense

1 complied within the four-day period given to the defense. Yet the above paragraph remains the
2 entirety of the People’s expert disclosure to date.

3 The People’s blatant failure to comply with basic rules of discovery is unduly prejudicial
4 to Mr. Martinez’ defense. Accordingly, the Court should exclude all government expert
5 witnesses, including those named in DDA Pribble’s May 28, 2023, email. (McBroom Decl.,
6 Exh. E.)

7 Alternatively, should the Court permit any one expert to testify, Mr. Martinez requests
8 the Court give CALCRIM Jury Instruction 306 – Untimely Disclosure of Evidence, as follows:

9 Both the People and the defense must disclose their evidence to the other side
10 before trial, within the limits set by law. Failure to follow this rule may deny
11 the other side the chance to produce all relevant evidence, to counter
opposing evidence, or to receive a fair trial.

12 An attorney for the People failed to disclose to the defense within the legal
13 time period the opinions of their expert witnesses, including [Name Experts
Here], and to what each would testify.

14 In evaluating the weight and significance of that evidence, you may consider
15 the effect, if any, of that late disclosure.

16 Lastly, it appears from the People’s disclosure that each expert will testify to the same
17 subject matter – “Child Sexual Abuse Accommodation Syndrome (CSASA) as well as “battered
18 person syndrome, counterintuitive victim behaviors, forensic interviewing of children,
19 autobiographical and traumatic injury, and the psychology behind children’s memory and
20 suggestibility”.

21 In such a case, having four experts testify to the same subject matter would be cumulative.
22 Should the Court allow such expert testimony, the Court should limit the number of the People’s
23 witnesses to avoid duplicative testimony. (*See, e.g., Dykstra v. Raffy (2018)*, 2022 Cal. Super.
24 LEXIS 61104, *7 (limiting the number of expert witnesses on the same subject and stating, *i.e.*,
25 “given that Dr. Dubrow and Dr. Nitti have both provided consistent opinions as to Decedent's
26 x-ray, there is no need for a third expert opinion on the same issue”).)

1 **C. Motion In Limine No. 3 to Exclude Reference to the Complaining Witnesses or any**
2 **Evidence Code Section 1108 Witnesses as “Victims”**

3 The defense anticipates that the People and the People’s witnesses will refer to the
4 complaining witnesses and potential Evidence Code section 1108 witnesses as “victims” during
5 trial. Because the term “victim” presumes that Mr. Martinez committed an offense; it is unduly
6 prejudicial. Pursuant to Evidence Code section 352, the Court may “exclude evidence if its
7 probative value is substantially outweighed by the probability that its admission will (a)
8 necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of
9 confusing the issues, or of misleading the jury.” (*People v. Cardenas* (1982) 31 Cal.3d 897, 904
10 [prejudicial evidence]; *People v. Sanders* (1995) 11 Cal. App.4th 475, 514 [undo consumption
11 of time]; *People v. Wagner* (1982) 138 Cal.App.3d 473, 481 [jury confusion].)

12 Here the term “victim” will indicate to the jury that, indeed, Mr. Martinez is guilty of a
13 criminal offense, thus undermining Mr. Martinez’ presumption of innocence and alleviating
14 the prosecutor’s burden of proof beyond a reasonable doubt. Further, the term “victim” has
15 absolutely no probative value. The complaining witnesses (including the 1108 witnesses, if any)
16 are not “victims” unless the jury determines they are after hearing and evaluating all of the
17 evidence. Terms such as “complaining witness” and “accuser” more appropriately identify
18 complaining witnesses and do not have the same unduly prejudicial effect as “victim.” Because
19 the probative value of the term “victim” is greatly outweighed by its prejudicial impact, the
20 Court should exclude any reference to a complaining witness and/or any Evidence Code section
21 1108 witnesses as “victims.”

22 **D. Motion in Limine No. 4 - [PROPOSED] Jury Instruction Regarding People’s**
23 **Concealment of Evidence**

24 The SBSB performed a polygraph on Mr. Martinez on January 23, 2019. The written
25 report states that the test is inconclusive. (McBroom Decl., ¶ 9.)

26 The People provided defense counsel with a written report summarizing the test and the
27 result but none of the actual testing results – i.e., charts generated by the polygraph machine.
28 (*Ibid.*) Accordingly, on May 8, 2023, defense counsel requested the testing data, including
 charts, relating to the polygraph test. (*Id.*, ¶¶ 10-11, Exh. G, May 8, 2023 Discovery Request;

1 Exh. H, May 9, 2023 Discovery Request.) DDA Pribble responded that the Sheriffs
2 Department’s “systems are down” and that the requested reports “cannot be obtained at this
3 time.” (*Id.*, ¶ 12, Exh. I, DDA Pribble’s May 9, 2023 Response to Discovery Request.)

4 On May 11, 2023, Mr. Martinez filed a Motion to Compel, among other things, the actual
5 printouts and data (“polygraph tracing and hand scoring notes”) relied upon by the SBS
6 polygrapher on January 23, 2019. (*Id.*, ¶ 13.) On the hearing date, May 22, 2023, the Court
7 stated the defense was entitled to such materials, and ordered the defense to provide areas, other
8 than the SBS database (which at the time was compromised) where the materials could be
9 located. (*Id.*, ¶ 14.) DDA Pribble represented to the Court that she would take steps to locate
10 the materials in the other areas suggested by defense. (*Ibid.*) The defense agreed to take the
11 Motion off calendar based on DDA Pribble’s representation. (*Ibid.*)

12 On May 24, 2023, defense counsel memorialized what had transpired in Court. (*Id.*, ¶
13 15, Exh. J, May 24, 2023 Email). Attorney Ian Wallach stated that per the Court’s instruction,
14 he was identifying for DDA Pribble 4 ways to retrieve the information sought, aside from the
15 Sheriff’s database. (*Ibid.*) Included was the suggestion that the materials may have been
16 maintained by Supervising Polygraph Examiner Michelle Coley. (*Ibid.*) On May 30, 2023,
17 DDA Pribble responded that, “I am informed that SBSO cannot retrieve the data you have
18 requested from their file system. This file system was the only place the data was stored.” (*Id.*,
19 ¶ 16, Exh. K, DDA Pribble’s May 30, 2023 Email). DDA Pribble’s email is silent as to whether
20 she or anyone at her office took the steps she promised to take in open court – to look in four
21 alternative locations for the materials. (*Ibid.*) And she did not.

22 On June 15, 2023, defense counsel spoke with Supervising Polygraph Examiner Michelle
23 Coley. (*Id.*, ¶ 17.) Within 10 minutes of the call, Ms. Coley provided, via email, the charts and
24 tracings from the polygraph test. (*Ibid.*) Ms. Coley represented that she had not been contacted
25 by DDA Pribble. Despite DDA Pribble’s representation to the defense and to this Court, the
26 polygraph documents were readily available and could have been produced by the People in a
27 matter of minutes. (*Ibid.*)

1 The People likely will argue that, regardless of DDA Pribble’s misrepresentations to the
2 defense and the Court, because the discovery at issue relates to a polygraph, the results of which
3 are not admissible in Court, there is no harm or prejudice. This contention is wrong.

4 Evidence Code section 351.1 provides as follows:

5 (a) Notwithstanding any other provision of law, the results of a polygraph
6 examination, the opinion of a polygraph examiner, or any reference to an offer
7 to take, failure to take, or taking of a polygraph examination, shall not be
8 admitted into evidence in any criminal proceeding, including pretrial and post-
9 conviction motions and hearings, or in any trial or hearing of a juvenile for a
criminal offense, whether heard in juvenile or adult court, unless all parties
stipulate to the admission of such results.

10 (b) Nothing in this section is intended to exclude from evidence statements made
11 during a polygraph examination which are otherwise admissible.

12 Nothing in this statute allows for the false reporting of polygraph results.

13 Bad faith concealment, alteration, or destruction of evidence are subject to sanctions
14 under Penal Code section 1054.5, subsection (b), when the evidence is required to be disclosed
15 under Penal Code section 1054.1 or section 1054.3. Available sanctions include disclosure of
16 the evidence, contempt, prohibiting the presentation of evidence or testimony of a witness, an
17 appropriate jury instruction, and dismissal of the case when required by the United States
18 Constitution and any other lawful order. (Pen. Code, § 1054.5(b)-(c).) Under Penal Code section
19 1054.1, “All relevant real evidence seized or obtained as part of the investigation of the offenses
20 charged” includes polygraph tracings and charts created during Mr. Martinez’ polygraph test.
21 Law enforcement certainly regarded them as relevant – they lied to Mr. Martinez about the
22 results in an unsuccessful effort to coerce a confession and misrepresented the results to Mr.
23 Martinez’ wife. SBSB then claimed to have “lost” the results when requested by the defense.
24 Relevant and admissible evidence are distinct things. The fact that the People regard evidence
25 as inadmissible or irrelevant or immaterial does not relieve People of their duty to disclose.

26 Mr. Martinez requests a jury instruction to address the People’s concealment of
27 discoverable evidence. Mr. Martinez suggests the following instruction:
28

1 The People concealed an item of discoverable evidence. You may decide that the
2 evidence would have been unfavorable to the People.

3 *(Modeled On CACI No. 204).*

4 **E. Motion in Limine No. 5 - [PROPOSED] Closed Hearing Regarding Jury Instruction**
5 **Concerning False Reporting And False Statements Of One Officer To A Percipient**
6 **Witness**

7 1. False Reporting Related to the Polygraph Examination of Defendant

8 Mr. Martinez requests a closed hearing to determine the veracity of Detective Josette
9 Tracy and Polygrapher Debbie Malm's determination and recording in a police report that the
10 test actually resulted in the highly rare determination of "inconclusive" rather than "no
11 deception detected." If established, Mr. Martinez would be entitled to a jury instruction related
12 to any false reporting or assertion made in connection with the polygraph, other than the ruse
13 unsuccessfully used as an attempt to coerce a confession from Mr. Martinez. While the
14 instruction could not mention the polygraph examination itself, it should, if established, state
15 that a false representation in police reporting was made by these officers.

16 If this conduct is established during the closed hearing, the defense proposes the
17 following instruction:

18 Detective Josette Tracy made a representation in a police report that was later
19 proven to be untrue. You are not to consider what the representation was
20 made in relation to. However, you may consider this when determining the
21 witness's credibility.

22 2. False Statements to a Percipient Witness Made by Officer
23 Raynolds

24 Officer Raynolds is recorded informing the wife of Mr. Martinez that Mr. Martinez was
25 being arrested based on the results of his polygraph exam. The only reasonable interpretation
26 of this statement is that Mr. Martinez failed the exam, which he indisputably did not.

27 San Bernadino County Sheriff's Policy and Procedure No. 1.628, "Truthfulness,"
28 provides as follows:

No member shall willfully depart from the truth, orally or in writing, when
giving testimony in a court of law, when preparing criminal or administrative

1 reports/documents, or in any matter under investigation by the department or
2 any other law enforcement agency.

3 Exceptions to this rule include:

4 Communications/interactions during authorized undercover investigations.

5 Communications/interactions during suspect interviews as allowed by
6 current statutory and/or case law.

7 Making a false statement to the spouse of a suspect, a percipient witness, is not within the
8 exceptions to this policy. Nor are false statements regarding a polygraph within the scope of
9 Evidence Code section 351.1 Accordingly, once the statements asserted above are established
10 at the closed hearing, the defense requests the following instruction:

11 Detective Raynolds made a false statement to a percipient witness in the
12 course of his investigation. You are not to consider what the statement was
13 made in relation to. However, you may consider this when determining the
14 witness's credibility.

15 **F. Motion In Limine No. 6 Concerning Prior Statements and/or Interviews of Child**
16 **Witnesses**

17 The People may attempt to introduce hearsay statements of child witnesses at trial. Mr.
18 Martinez is entitled to judicial review of any prior statements or interviews of any and all child
19 witnesses for a finding of reliability prior to publication.

20 Evidence Code section 1360 provides:

21 (a) In a criminal prosecution where the victim is a minor, a statement made by the
22 victim when under the age of 12 describing any act of child abuse or neglect
23 performed with or on the child by another, or describing any attempted act of child
24 abuse or neglect with or on the child by another, is not made inadmissible by the
25 hearsay rule if all of the following apply: (1) The statement is not otherwise
26 admissible by statute or court rule. (2) The court finds, in a hearing conducted
27 outside the presence of the jury, that the time, content, and circumstances of the
28 statement provide sufficient indicia of reliability. (3) The child either: (A) Testifies
at the proceedings. (B) Is unavailable as a witness, in which case the statement
may be admitted only if there is evidence of the child abuse or neglect that
corroborate the statement by the child.

29 The statute embodies the Supreme Court's holding in *Idaho v. Wright*, (1990) 497 U.S. 805,
30 814-815, where the United States Supreme court stated:

31 In *Ohio v. Roberts*, we set forth "a general approach" for determining when
32 incriminating statements admissible under an exception to the hearsay rule also
33 meet the requirements of the Confrontation Clause. 448 U.S. at 65. We noted

1 that the Confrontation Clause "operates in two separate ways to restrict the range
2 of admissible hearsay." *Ibid.* "First, in conformance with the Framers' preference
3 for face-to-face accusation, the Sixth Amendment establishes a rule of
4 necessity. In the usual case . . . , the prosecution must either produce, or
5 demonstrate the unavailability of, the declarant whose statement it wishes to use
6 against the defendant." *Ibid.* (citations omitted). Second, once a witness is shown
7 to be unavailable, "his statement is admissible only if it bears adequate 'indicia of
8 reliability.'" Reliability can be inferred without more in a case where the evidence
9 falls within a firmly rooted hearsay exception. In other cases, the evidence must
10 be excluded, at least absent a showing of particularized guarantees of
11 trustworthiness." *Id.*, at 66 (footnote omitted); *see also Mancusi v. Stubbs*, 408
12 U.S. 204, 213, 33 L. Ed. 2d 293, 92 S. Ct. 2308 (1972).

13 The *Wright* court went on to state:

14 In *Roberts*, we suggested that the "indicia of reliability" requirement could be met
15 in either of two circumstances: where the hearsay statement "falls within a firmly
16 rooted hearsay exception," or where it is supported by "a showing of particularized
17 guarantees of trustworthiness." 448 U.S. at 66; *see also Bourjaily, supra*, at 183
18 ("The co-conspirator exception to the hearsay rule is firmly enough rooted in our
19 jurisprudence that, under this Court's holding in *Roberts*, a court need not
20 independently inquire into the reliability of such statements"); *Lee v. Illinois*, 476
21 U.S. 530, 543, 90 L. Ed. 2d 514, 106 S. Ct. 2056 (1986) [*817] ("Even if certain
22 hearsay evidence does not fall within 'a firmly rooted hearsay exception' and is
23 thus presumptively unreliable and inadmissible for Confrontation Clause
24 purposes, it may nonetheless meet Confrontation Clause reliability standards if it
25 is supported by a 'showing of particularized guarantees of trustworthiness'")
26 (footnote and citation omitted).

27 (*Wright, supra*, 497 U.S. at 816-17.)

28 While the *Wright* court rejected a certain litmus test be applied to determine reliability
(for example, a lack of video or the use of allegedly leading questions), it clarified that, at a
minimum, the trial court must evaluate the out-of-court statements for reliability prior to
presentation to the jury. The *Wright* Court held that "if the declarant's truthfulness is so clear
from the surrounding circumstances that the test of cross-examination would be of marginal
utility, then the hearsay rule does not bar admission of the statement at trial." (*Id.* at 820.) The
Court further stated that "[t]hus, unless an affirmative reason, arising from the circumstances in
which the statement was made, provides a basis for rebutting the presumption that a hearsay
statement is not worthy of reliance at trial, the Confrontation Clause requires exclusion of the
out-of-court statement." (*Id.* at 821.) And the Court is to consider the statement itself, without

1 consideration to other evidence which may or may not support the challenged statement. (*Ibid.*
2 (“To be admissible under the Confrontation Clause, hearsay evidence used to convict a
3 defendant must possess indicia of reliability by virtue of its inherent trustworthiness, not by
4 reference to other evidence at trial”).)

5 For reasons that the defense maintains the Court will find self-evident, the initial forensic
6 interview of Complaining Witness Ismael R. and the initial interview of witness Xzavier B., as
7 well as any other out-of-court interviews, must be, prior to publication to the Jury, reviewed by
8 the Court for a determination that they possess sufficient indicia of reliability to warrant
9 publication to the jury.

10 The defense maintains that due to use of leading questions, challenging exculpatory
11 responses, and rewarding inculpatory statements, certain interviews – and especially that of
12 Xzavier B. on January 22, 2019, lack sufficient guarantees of trustworthiness to overcome the
13 defendant’s right to cross-examination.

14 **G. Motion In Limine No. 7 for Clarification as to the Objection of “Argumentative”**

15 The defense anticipates the People will object to the defense’s questioning and
16 impeachment of government witnesses as “argumentative.” This objection is often utilized
17 when the defense attacks the credibility of government witnesses with contradictory statements
18 and/or testimony or actions which do not support the witness’s assertions. Proper impeachment
19 often goes mischaracterized as “argument” with the witness. Accordingly, the defense seeks
20 clarification from this Court as to the “argumentative” objection.

21 In *People v. Chatman* (2006) 38 Cal.4th 344, 384), the Court stated:

22 An argumentative question is a speech to the jury masquerading as a
23 question. The questioner is not seeking to elicit relevant testimony. Often it
24 is apparent that the questioner does not even expect an answer. The question
25 may indeed be unanswerable. The prosecutor’s question whether “the safe
26 [was] lying” is an example. An inanimate object cannot “lie.” . . . An
27 argumentative question that essentially talks past the witness, and makes an
28 argument to the jury, is improper because it does not seek to elicit relevant
competent testimony, or often any testimony at all. Defendant had already
explained he had no explanation for the safe being open. Asking whether the
safe was “lying” could add nothing to this testimony.

1 [C]ourts should carefully scrutinize “were they lying” questions in context. They
2 should not be permitted when argumentative, or when designed to elicit testimony
3 that is irrelevant or speculative. However, in its discretion a court may permit such
4 questions if the witness to whom they are addressed has personal knowledge that
allows him to provide competent testimony that may legitimately assist the trier
of fact in resolving credibility issues.

5 (*Ibid.*)

6 In an article published in the Pepperdine Law Review, an argumentative question is
7 defined as a question that “asks the witness to accept the examiner’s summary, inference, or
8 conclusion rather than to agree with the existence . . . of a fact.” (Pepperdine Law Review;
9 Volume 29, Issue 2, Article 11-15-2002, “Trial Objections from Beginning to End: The
10 Handbook for Civil and Criminal Trials” by Craig Lee Montz.) The article provides the
11 following examples:

12 “Dr. Grigson, you’re kind of the hatchet man down here for the District
13 Attorney’s office, aren’t you?”
14 “Did you ever meet a person you didn’t think was a sociopath?”
15 “It wouldn’t bother you any, to come in here and lie from the time you started
to the time you stopped, would it.?”

16 (*Id.* at pp. 293-94.)

17 The article contemplates that an argumentative question is one in which counsel is
18 making an argument appropriate for summation. Finally, Black’s Law Dictionary defines
19 argumentative as “[a] question in which the examiner interposes a viewpoint under the guise of
20 asking a question” (Black’s Law Dictionary, 11th Ed.)

21 By that logic, a question is not argumentative if it challenges the witness’s testimony,
22 calls attention to inconsistencies or insufficient answers, or even accuses the witness of being
23 misleading or avoiding a question. Tone is not the issue – the issue is whether the question can
24 be answered, rather than a plea to the jury in the form of a question.

25 To avoid a series of objections and rulings related to whether questions are
26 “argumentative” – the defense seeks the Court’s guidance in establishing and clarifying the
27 framework that will allow the parties to challenge witnesses freely and without limitation.

28

1 **H. Motion in Limine No 8 to Preclude Officers From Giving Expert Testimony As To**
2 **Child Psychology Or Similar Issues**

3 Throughout the investigation, Detective Josette Tracy and Detective Womelsdorf
4 repeatedly make statements to the effect of “Children don’t lie about sex” and “Children don’t
5 lie when they supply details about assault.” The defense is concerned that the detectives may
6 make the same suggestions or statements to the jury.

7 As the Court is aware, in *People v. Brown* (2016) 245 Cal. App. 4th 140, 142, the Court
8 clarified the role of the expert witness as follows:

9 California law permits a person with special knowledge, skill, experience,
10 training, or education in a particular field to qualify as an expert witness and
11 to give testimony in the form of an opinion. Generally, the opinion of an
12 expert is admissible when it is related to a subject that is sufficiently beyond
13 common experience that the opinion of an expert would assist the trier of
14 fact. Under Evid. Code, § 801, subd. (a), expert testimony must be related to
15 a subject that is sufficiently beyond common experience that the opinion of
16 an expert would assist the trier of fact. However, where the jury is just as
17 competent as the expert to consider and weigh the evidence and draw the
18 necessary conclusions, then the need for expert testimony evaporates. Expert
19 testimony will be excluded when it would add nothing at all to the jury's
20 common fund of information, i.e., when the subject of inquiry is one of such
21 common knowledge that men and women of ordinary education could reach
22 a conclusion as intelligently as the witness.

23 Upon information and belief, none of the officers or detectives in this case are sufficiently
24 qualified to explain matters of child psychology that are sufficiently beyond common experience
25 that the opinion of an expert would assist the trier of fact. Accordingly, the detectives and
26 officers should be admonished to avoid offering such expert testimony.

27 **I. Motion in Limine No. 9 to Preclude Leadings Questions by the People to Child**
28 **Complaining Witnesses and Evidence Code Section 1108 Witnesses**

 The People will be calling child witnesses in this case. As discussed in Section F. above,
a number of the out of court interviews of the children include suggestive, leading questions
which signal to the children the desired answer. The defense anticipates the People will attempt
the same style of leading questioning of the children at trial, particularly when the desired answer
is not forthcoming.

1 Evidence Code section 767 provides:

2 (a) Except under special circumstances where the interests of justice
3 otherwise require: (1) A leading question may not be asked of a witness on
4 direct or redirect examination. (2) A leading question may be asked of a
witness on cross-examination or recross-examination.

5 (b) The court may, in the interests of justice, permit a leading question to be
6 asked of a child under 10 years of age or a dependent person with a
7 substantial cognitive impairment. . .”

8 The People have disclosed the following child witnesses: Ismael R., age 11; Xzavier B., age 11;
9 and Millie M., age 13. Given that all children are over the age of 10, the People may not avail
10 themselves of Evidence Code 767, subsection (b).

11 **J. Motion in Limine No. 10 to Admit Evidence of Parallel Civil Proceedings**

12 Both complaining witnesses, Ismael R. and Xzavier B. filed civil lawsuits against
13 Hesperia Unified School District and Mr. Martinez individually in 2019. The People’s proposed
14 1108 witness, Millie M., filed a similar civil lawsuit in 2020. Each witness, through their
15 respective guardians, seeks monetary compensation for the acts alleged against Mr. Martinez in
16 this case.

17 The defense anticipates the People will request an order precluding mention of or
18 reference to the parallel civil proceedings. The existence of civil proceedings, the timing of the
19 initiation of the civil actions, and the amount of compensation requested by the witnesses is
20 relevant and probative to the witnesses’ and their adult guardians’ motivations in this case.

21 Such a financial motive falls squarely into CALCRIM 226 which inquires, *inter alia*,
22 “Was the witness’s testimony influenced by a factor such as bias or prejudice, a personal
23 relationship with someone involved in the case, or a personal interest in how the case is
24 decided?” – The financial interest admittedly sought to be gained on behalf of the
25 Plaintiffs/complaining witnesses in this matter is clearly – for the reasons set forth below –
26 relevant to bias and a “personal interest in how the case is decided.”

27 Whether the People secure a conviction, which necessarily requires the testimony of child
28 witnesses, all of whom have a financial interest in the parallel civil matters, will greatly affect
the trajectory and outcome of those civil matters.

1 Evidence Code section 1300 provides:

2 Evidence of a final judgment adjudging a person guilty of a crime punishable
3 as a felony is not made inadmissible by the hearsay rule when offered in a
4 civil action to prove any fact essential to the judgement. . .

5 Pursuant to Evidence Code section 1300, should Mr. Martinez suffer a conviction in this
6 case, the witnesses against Mr. Martinez may seek to introduce any criminal conviction at the
7 civil trial to prove the same conduct alleged in the civil matter. In other words, the witnesses'
8 chances of recovering monetary damages in the civil actions depend largely on whether Mr.
9 Martinez is convicted in this case. Accordingly, the civil lawsuits filed by Ismael R., Xzavier
10 B., and Millie M. are probative as to their motivations for making certain allegations, the
11 motivations of their guardians who, no doubt, have authority and influence over the witnesses,
12 and how Plaintiff's counsel and various therapists and other experts selected by Plaintiff's
13 counsel may have sway over the witnesses' testimony.

14 One example of relevant motive is that taken from Ms. Serna's deposition taken
15 in the civil matter. She stated that she began calling lawyers on January 23, 2019 – the
16 day that Mr. Martinez was arrested – and testified:

17 A: I wanted [Ismael] to be compensated for all the trauma he was put
18 under and everything bad that Mr. Martinez did to him. I thought that
19 somebody should pay.

20 Q: Okay. And when did it occur to you that Hesperia Unified School
21 District was responsible for what happened to Billy Roe?

22 A: Because that's where he attended, and they didn't do their job to
23 protect him.

24 (Deposition of Magdalena Serna of November 2, 2021., *Billy Roe et. al. v. Hesperia School*
25 *District, et. al.*, Case No. CIVDS1904175, p. 30:9-17, relevant excerpt attached to McBroom
26 Decl., ¶ 18, Exh. L.)

27 **K. Motion in Limine No. 11 - Preclusion Of Searches For Pornography – None Of**
28 **Which Identified Child Pornography Or Associated Terms**

29 On February 5, 2019, forensic searches were conducted on Mr. Martinez' two Apple
30 iPhones. Detective Arias reviewed the contents of Mr. Martinez's Apple iPhone 7 on February
31 8, 2019. According to Detective Arias, Mr. Martinez' photo gallery included photos of family

1 and friends, and pictures from Maple Elementary School’s “Mr. Pete Day” wherein the students
2 and faculty honored Mr. Pete for his hard work and dedication to the school. Detective Arias
3 did not locate any pornographic photos of any kind in Mr. Pete’s photo gallery.

4 Detective Arias reviewed Mr. Martinez’ browsing history. He noted that Mr. Martinez
5 had several internet searches for several adult porn sites as well as sites for sports, shopping,
6 cars, and hardware. Detective Arias found the following internet searches from July 2018 of
7 note and detailed them in a written report:

8 “Girls Fucking Horses” – July 13, 2018, at approximately 10:52 p.m.; April 6, 2017 at
9 approximately 7:52 p.m.

10 “Dirty Cartoon Sex Porn” – July 4, 2018, at approximately 9:45 p.m.

11 “3D DP Porn” – July 4, 2018, at approximately 9:35 p.m.

12 “3D DP Porn Comics” – July 4, 2018, at approximately 9:30 p.m.

13 “3D Animation Porn Cartoons” – July 4, 2018, at approximately 9:15 p.m.

14 “3D Porn Cartoon” – July 4, 2018, at approximately 9:06 p.m.

15 “Incredibles Cartoon Porn” – July 4, 2018, at approximately 9:05 p.m.

16 “Famous Mother Cartoon Porn” – July 4, 2018, at approximately 8:25 p.m.

17 “Famous Toons Porn Animated” – July 4, 2018, at approximately 5:08 p.m.

18 “Big Boot Incredibles Porn” – July 3, 2018, at approximately 9:56 p.m.

19 “Big Ass Cartoon Mom Hentai” – July 3, 2018, at approximately 9:52 p.m.

20 Using the above wording from Mr. Martinez’ browsing history, Detective Arias conducted
21 searches on Mr. Martinez’ phone. He then selected images/links which appeared from those
22 searches and compiled them in his written report. None of the images or videos were saved to
23 Mr. Martinez’ phone. Additionally, given the date and times of these searches, none was
24 conducted during work hours or on a date/time that could be at issue in this case. The images
25 Detective Arias chose to include in his report include adult women engaging in bestiality and
26 images of cartoon characters engaging in sex acts.

27 At best, the images downloaded by Detective Arias were guesses as to what Mr. Martinez
28 might have seen from the search terms. Accordingly, there is no foundation for the admission
of such evidence.

The defense requests an order excluding any reference to Mr. Martinez’ browsing history
and photographs mined by Detective Arias using search terms. Under Evidence Code section
350, the browsing history and photographs selected by Detective Arias are not relevant to any

1 issue in dispute. First, the searches were conducted in July 2018, long before Mr. Martinez is
2 alleged to have engaged in misconduct. None of the searches were made during the time in
3 question and none of the images selected by Detective Arias were saved to Mr. Martinez' phone
4 such that he could display them to anyone.

5 Second, the photos included in Detective Arias report were acquired by Detective Arias
6 conducting an internet search in February 2019. There is zero evidence that Mr. Martinez viewed
7 or accessed any one image selected by Detective Arias.

8 Third, none of the images depict child pornography.

9 Fourth, as the images are merely Detective Arias' guesses as to what Mr. Martinez might
10 have seen, there is no foundational basis to admit the images or attribute them to Mr. Martinez.
11 (Cal. Evid. Code § 403.)

12 Fifth, not a single search term references child pornography or could reasonably be
13 argued to have been intended to locate child pornography.

14 The browsing history and images selected by Detective Arias should be excluded under
15 Evidence Code sections 403 and 352. Not only is the evidence lacking in any probative value
16 but would only serve to prejudice the jury against Mr. Martinez. Images of bestiality and hyper-
17 sexualized cartoon images, although far from child pornography, may be disturbing or even and
18 grotesque to some jurors. Mr. Martinez is charged with harming children – not searching for
19 pornography unrelated to child-pornography in the evening and in off-work hours. The evidence
20 will distract from the matter at hand and paint Mr. Martinez in a negative light and is far more
21 prejudicial than probative.

22 **L. Motion in Limine No. 12 – Remedy for Detective Arias' Misrepresentation to the**
23 **Court Concerning the Forensic Searches Conducted on Mr. Martinez' Phones**

24 On March 5, 2020, Detective Arias testified at the preliminary hearing in this matter.
25 Among other things, he testified about his search of Mr. Martinez' electronic devices. Detective
26 Arias made misrepresentations to the Court as to what was recovered from Mr. Martinez' phone.
27 DDA Pribble inquired whether Detective Arias "review[ed] any photographs on Pedro
28 Martinez's cell phone." (PHT 35:16-17.) Detective Arias testified that he recovered "several

1 hundred images” from Mr. Martinez’s cellphone. When asked whether the photographs found
2 on his phone “had to do with school personnel having sex with children,” Detective Arias
3 responded, “there were several cartoon images of adults having sex with children.” (PHT 35:20-
4 23.) He continued, “There were several images of Disney characters having sex with each other;
5 several cartoon images of adults having sex; sodomy. . .there was a few images that I remember
6 – that stood out was – it was two cartoon images of prepubescent females; one of them
7 masturbating an adult male’s penis. And there was another one where a male juvenile,
8 prepubescent, was having sexual intercourse with an adult female. “ (PHT 35:24-36:9.) When
9 the Court inquired seeking clarification as to the images recovered from the phone, Detective
10 Arias testified, “There was just the pictures of – I mean, there was so many pictures. . . As far
11 as cartoons, I remember there was a cartoon image of adults having, like, an orgy with children.”

12 Detective Arias’ sworn testimony was false. As discussed above, Mr. Martinez did not
13 have any such images or videos in his photo gallery or otherwise saved on his phone, and the
14 People cannot show or claim that he did. Rather, as discussed above, Detective Arias performed
15 web searches using a browsing history on Mr. Martinez’ phone. The browsing history is bereft
16 of searches for child pornography or children, cartoon images of children or otherwise, engaging
17 in sex acts. Additionally, it is unclear what Mr. Martinez viewed and did not view. Detective
18 Arias led the Court to believe otherwise.

19 Penal Code section 118(a) provides:

20 Every person who, having taken an oath that he or she will testify, declare, depose,
21 or certify truly before any competent tribunal, officer, or person, in any of the
22 cases in which the oath may by law of the State of California be administered,
23 willfully and contrary to the oath, states as true any material matter which he or
24 she knows to be false, and every person who testifies, declares, deposes, or
25 certifies under penalty of perjury in any of the cases in which the testimony,
26 declarations, depositions, or certification is permitted by law of the State of
27 California under penalty of perjury and willfully states as true any material matter
28 which he or she knows to be false, is guilty of perjury.

Further, Penal Code section 127 provides:

Every person who willfully procures another person to commit perjury is guilty of
subornation of perjury, and is punishable in the same manner as he would be if
personally guilty of the perjury so procured.

1 The defense contends that Detective Arias committed perjury and that DDA Pribble
2 suborned it. At the very least, Detective Arias made an intentional misrepresentation to the
3 Court. Bad faith concealment, alteration, or destruction of evidence are subject to sanctions
4 under Penal Code section 1054.5, subsection (b), when the evidence is required to be disclosed
5 under Penal Code section 1054.1 or section 1054.3. Available sanctions include disclosure of
6 the evidence, contempt, prohibiting the presentation of evidence or testimony of a witness, an
7 appropriate jury instruction, and dismissal of the case when required by the United States
8 Constitution and any other lawful order. (Pen. Code, § 1054.5(b)-(c).)

9 Detective Arias' blatant misconduct is a violation of Mr. Martinez' due process right to
10 a fair trial. Accordingly, Mr. Martinez requests an order dismissing the operative Information
11 in its entirety. If the Court is not inclined to dismiss the case, the defense requests that Detective
12 Arias be precluded from testifying at trial. Given Detective Arias' willingness to make material
13 misrepresentations to Court at preliminary hearing, Detective Arias should not be permitted to
14 testify before a jury at Mr. Martinez' trial.

15 Should the Court allow Detective Arias to testify at trial, the defense requests the
16 following jury instruction:

17 In a prior hearing, Detective Arias made a material misrepresentation to the
18 Court concerning evidence in this case. You are not to consider what the
19 evidence related to. However, you may consider this when determining the
witness's credibility.

20 **M. Motion in Limine No. 13 Regarding Article Discovered in Photo Gallery**

21 On February 8, 2019, Detective Arias reviewed the contents of Mr. Martinez's Apple
22 iPhone 7, including Mr. Martinez' photo gallery. Detective Arias noted that the gallery included
23 several photos of family and friends. In his written report, Detective Arias noted that a screen
24 shot of a headline of an article concerning a female teacher having an inappropriate relationship
25 with a student was discovered. The screen shot reads, "Fox News. Teen's dad busted Texas
26 teacher, 44, having sex with student in car, police say." Under the caption is a photograph of a
27 woman in prison garb. No additional information is saved. Detective Arias does not provide
28

1 information regarding how this photo was obtained and when. Further, he failed to provide any
2 information concerning the case referenced in the headline.

3 The headline relates to a 2017 case out of Houston, Texas wherein a female, fourth grade
4 teacher was alleged to have engaged in an inappropriate relationship with a 13-year-old student.
5 (https://baycitytribune.com/community/article_803fffb2-8d1a-11e9-8384-87bed54ac9af.html;
6 [https://www.10news.com/news/texas-dad-catches-teacher-having-sex-with-13-year-old-in-car-](https://www.10news.com/news/texas-dad-catches-teacher-having-sex-with-13-year-old-in-car-police-say)
7 [police-say](https://www.10news.com/news/texas-dad-catches-teacher-having-sex-with-13-year-old-in-car-police-say)). Evidence on the 13-year-old's phone indicated that the two had been carrying on a
8 romantic relationship.

9 The screen shot should be excluded from evidence at trial under Evidence Code sections
10 350 and 352. First, there is a foundational issue. It is unknown from where and when Mr.
11 Martinez acquired this image. Second, the fact of the screen shot is not relevant to any issue in
12 dispute. Mr. Martinez is not alleged to have engaged in misconduct like that of the Houston
13 defendant. Further, the fact that Mr. Martinez may have some interest in the Houston case
14 (including being appalled by the thought of a teacher taking advantage of a student) does not
15 suggest that he engaged in the misconduct alleged. Third, the photo of the headline is
16 prejudicial. It would serve only to mislead, confuse, and inflame the jury. The defense
17 anticipates the People may argue that Mr. Martinez was actively searching out instances of child
18 molestation and the risks of such. There is no evidence of that – not in Mr. Martinez' search
19 history or anywhere else.

20 **N. Motion in Limine No. 14 Regarding Magdalena Serna's Obsessive Interest and**
21 **Instruction on Child Molestation and Her Prior Allegations of Sexual Abuse, Rape,**
22 **and Sodomy Against Others**

23 Ms. Serna is the individual who instigated the criminal investigation of Mr. Martinez.
24 She also initiated a civil case against Hesperia School District and Mr. Martinez prior to criminal
25 charges being filed in this case. As set forth in detail in the concurrently filed Penal Code section
26 782 Motion, Section D., Ms. Serna has accused several men throughout her life of sexual assault
27 and child molestation and repeatedly discussed child molestation with Ismael R. in the months
28 prior to the allegations in this case. As is evident from Ms. Serna's deposition testimony in the
parallel civil action, Ms. Serna has a fixation on rape and child molestation and often, if not

1 always, attributes odd or concerning behavior by children to some form of sexual abuse by men
2 in particular.

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

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

18 (*Id.*, p. 563.)

19 Law enforcement officers in this case have testified under oath that children do not lie
20 about sexual abuse and that any recollections are the result only of an actual molestation event.
21 The People have been provided with these deposition transcripts. The defense seeks to introduce
22 evidence of Ms. Serna’s fixation on child molestation, particularly by men, and her constant
23 discussion with and questioning of Ismael R. concerning child molestation to show an alternative
24 source of sexual knowledge on Ismael’s part. Specifically, the defense intends to question Ms.
25 Serna about her fixation on and prior accusations of sexual abuse and sexual assault and repeated
26 questioning of Ismael in this regard. The basis of this evidence can be found in Ms. Serna’s
27 sworn testimony, prior police reports in which Ms. Serna reported molestation, DCFS records
28 belonging to Ismael R., and statements by Ms. Serna’s sister-in-law as to allegations of sexual
abuse and rape against several family members. The People are in possession of all these
materials.

1 **O. Motion in Limine No. 15 - Proposed Jury Instruction Concerning Suggested**
2 **Memory**

3 The People intend to offer expert testimony (DDA Pribble has not disclosed which expert
4 of four identified) concerning Child Sexual Abuse Accommodation Syndrome. Assuming the
5 Court allows this testimony, the People will request CALCRIM Instruction 1193, Testimony on
6 Child Sexual Abuse Accommodation Syndrome, which states:

7 You have heard testimony from _____ <insert name of expert> regarding
8 child sexual abuse accommodation syndrome. Child sexual abuse accommodation
9 syndrome relates to a pattern of behavior that may be present in child sexual abuse
10 cases. Testimony as to the accommodation syndrome is offered only to explain
11 certain behavior of an alleged victim of child sexual abuse. _____'s <insert
12 name of expert> testimony about child sexual abuse accommodation syndrome is
13 not evidence that the defendant committed any of the crimes charged against
14 (him/her) [or any conduct or crime[s] with which (he/she) was not charged]. You
15 may consider this evidence only in deciding whether or not _____'s
16 <insert name of alleged victim of abuse> conduct was consistent with the conduct
17 of someone who has been molested, and in evaluating the believability of the
18 alleged victim.

19 The Court is not obligated to give this instruction *sua sponte*.

20 The defense intends to call four expert witnesses, including Dr. Bradley McAuliff, J.D.,
21 Ph.D. who will testify as to suggested memory, specifically that suggested memory in children
22 can result from certain interrogation techniques including leading, suggestive questions;
23 rewarding disclosure; and discouraging a denial of misconduct, which have proven to be
24 unreliable. Should the Court allow the People's expert to testify as well as defense expert Dr.
25 McAuliff, and should the Court decide to give CALCRIM Instruction 1193 at the People's
26 request, the defense requests the following special jury instruction:

27 You have heard testimony from Dr. Bradley McAuliff regarding suggested
28 memories in children. Suggested memory can result from the use of unreliable
interrogation and interview techniques including suggestive, leading questions,
rewarding disclosures, and discouraging non-disclosure. Testimony as to
suggested memory is offered only to explain how false memories can be
developed in children. Dr. McAuliff's testimony about suggested memory is not
evidence that the accusers are being untruthful. You may consider this evidence
only in deciding whether or not Ismael R's. and Xzavier B.'s conduct is consistent
with the conduct of someone who has been subjected to unreliable interview
techniques.

1 **P. Motion in Limine No. 16 – Use of Deposition Transcripts to Impeach Witnesses**

2 In the matter of *Billy Roe, et al. v. Hesperia Unified School District, et al.*, Case No.
3 CIVDS1904175, *X.M. v. Hesperia Unified School District, et al.*, Case No. CIVDS1907602,
4 and *M.M. v. Hesperia Unified School District, et al.*, Case No. CIVDS2013078, Xzavier B.,
5 Ismael R., and 1108 Witness Millie M. sued Hesperia Unified School District and Mr. Martinez,
6 individually, for harm suffered as a result of the misconduct alleged in this case. In those cases,
7 Mr. Martinez, through his civil defense attorney, deposed a number of witnesses who are likely
8 to testify at trial in this case. Despite no obligation to produce impeachment evidence to the
9 People, the defense has produced a number of deposition transcripts to the People in an effort to
10 avoid disputes and delay at trial. On July 14, 2023, DDA Pribble stated in open court that the
11 defense is improperly using the civil case to conduct discovery in the criminal case and thereby
12 violating criminal discovery rules. DDA Pribble is wrong and failed to cite any authority
13 supporting her position. The defense, nevertheless, suspects the People will argue that Mr.
14 Martinez is precluded from using deposition transcripts to impeach witnesses at the criminal
15 trial. This position has no basis in law or reason.

16 Mr. Martinez is a party to civil cases initiated by Ismael R., Xzavier B., and Millie M.
17 wherein he is defending against the same allegations at issue in this case. He was and is at liberty
18 to conduct discovery, including via deposition, of percipients witnesses, including his accusers
19 and law enforcement officers. He is not restricted from using sworn testimony of deponents in
20 the civil case to impeach witnesses at the criminal trial. Code of Civil Procedure section
21 2025.620 provides:

- 22 (a) Any party may use a deposition for the purpose of contradicting or impeaching
23 the testimony of the deponent as a witness, or for any purpose permitted by the
24 Evidence Code.
- 25 (g) When an action has been brought in any court of the United States or of any state,
26 and another action involving the same subject matter is subsequently brough
27 between the same parties or their representatives or successors in interest, all
28 depositions lawfully taken and duly filed in the initial action may be used in the
 subsequent action as if originally taken in that subsequent action. A deposition
 previously taken may also be used as permitted by the evidence code

1 Further Evidence Code section 770 states that “extrinsic evidence of a statement by a
2 witness that is inconsistent with any part of his testimony at the hearing shall be excluded unless
3 (a) the witness was so examined while testifying as to give him an opportunity to explain or
4 deny the statement; or (b) the witness has not been excused from giving further testimony in the
5 action.”

6 Nothing in Code of Civil Procedure or the Evidence Code precludes the defense from
7 using sworn testimony (extrinsic evidence) that is inconsistent with a witness’ in-court testimony
8 in order to impeach him/her. Impeachment with sworn testimony taken in a case initiated by
9 the same complainants in this case is in no way violative the criminal discovery rules or an
10 improper use of the civil case to conduct discovery in the criminal matter. The jury should be
11 permitted to evaluate inconsistencies in sworn testimony in order to properly assess the
12 credibility of the witnesses at trial.

13 **Q. Motion in Limine No. 17 – Clarification As To Whether There Has Been**
14 **Communication Between The People And The Plaintiff’s Counsel In The Related**
15 **Civil Case**

16 During the hearing on July 14, 2023, in open court and on the record, Deputy District
17 Attorney Deena Pribble argued that “the defense has been improperly using the civil action as a
18 discovery tool.” Upon information and belief, this is *the exact language* used in an email from
19 the Plaintiff’s counsel in the parallel civil matter to Mr. Martinez’ civil defense counsel. Unless
20 this is a highly unusual coincidence, this suggests that Deputy District Attorney has had direct
21 or indirect contact with Plaintiff’s counsel. The People have provided no statements related to
22 any such conversations, and the defense believes that discussions of flaws in the People’s case
23 with the counsel in the Plaintiff’s case is not within the work product privilege.

24 The defense implores the Court, under *Brady* and its progeny, to inquire as to whether
25 the People have been in contact with this attorney and, if so, to provide statements summarizing
26 any communications.

27 **R. Motion in Limine No. 18 – Clarification Of Dates And Nature Of Alleged Events.**

28 The accusatory pleading lacks a description of the alleged time frame or the alleged kind of
acts or acts with sufficient particularity. The Court should order the People to identify what

1 act(s) took place when to allow the defense to show they could not have, to ensure that he is not
2 being misled in his defense, subjected to double-jeopardy, and able to rely on a unanimity
3 instruction.

4 This is especially true for Counts 9, 10, and 11, which make vague allegations from which
5 even the Court could not ascertain what is alleged, and are alleged to have occurred somewhere
6 within a five and a half month period.

7 In *People v. Hoyt* (2020) 8 Cal.5th 892, 923, the Court reiterated the requirement that
8 sufficient notice of the alleged acts must be supplied by the accusatory instrument:

9 Both the Sixth Amendment of the federal Constitution and the due process
10 guarantees of the state and federal Constitutions require that a criminal defendant
11 receive notice of the charges adequate to give a meaningful opportunity to
12 defend against them.” (*People v. Williams* (2013). Notice is supplied in the first
13 instance by the accusatory pleading. (E.g., *People v. Jones* (1990) 51 Cal.3d 294,
14 317). But a variance between the pleading and proof at trial will be disregarded if
15 it is not material. (*People v. LaMarr* (1942) 20 Cal.2d 705, 711 [128 P.2d
16 345].) “The test of the materiality of a variance is whether the indictment or
17 information so fully and correctly informs the defendant of the criminal act with
18 which he is charged that, taking into consideration the proof which is introduced
19 against him, he is not misled in making his defense, or placed in danger of being
20 twice put in jeopardy for the same offense. (*Ibid.*; accord, *People v. Maury* (2003)
21 30 Cal.4th 342, 427–28; *People v. Arras* (1891) 89 Cal. 223, 226.)

22 For the People to assert a count in good faith, they must be in possession of evidence that
23 supports identification of the specific conduct alleged and when it did so. In *People v. Jones*,
24 51 Cal. 3d 294, 316 (1990), the Court stated:

25 The victim, of course, must describe *the kind of act or acts committed* with
26 sufficient specificity, both to assure that unlawful conduct indeed has occurred
27 and to differentiate between the various types of proscribed conduct (e.g., lewd
28 conduct, intercourse, oral copulation or sodomy). Moreover, the victim must
describe the *number of acts* committed with sufficient certainty to support each of
the counts alleged in the information or indictment (e.g., "twice a month" or "every
time we went camping"). Finally, the victim must be able to describe *the general
time period* in which these acts occurred (e.g., "the summer before my fourth
grade," or "during each Sunday morning after he came to live with us"), to assure
the acts were committed within the applicable limitation period.

29 Vague allegations of non-specific acts comprise the content of all statements provided to Mr.
30 Martinez to date (aside from double-hearsay statements provided by Magdalena Serna, which

1 go into great detail as to what acts Ismael M. allegedly described to Magdalena Serna, but no
2 one else). The number of events actually alleged by the complaining witnesses remained unclear
3 during the preliminary hearing and remains so today. The defense implores the Court to ask the
4 People, as to Counts 9 to 11, “what are you alleging happened, and when are you alleging that
5 it did?” as Mr. Martinez is still unclear as to what this answer would be.

6 As to Counts 9, 10, and 11, a five and a half month period is too broad for Mr. Martinez
7 to be able to mount a defense as to whether the alleged two acts could have transpired (in fact,
8 this has resulted in the need for multiple school employees to be called as witnesses to establish
9 that nothing could have happened even during this broad period – yet the defense anticipates
10 that the People will argue that these witnesses’ testimony is cumulative).

11 The Court will be required to provide some form of unanimity instruction. (*Jones, supra,*
12 at 322.) At present, the People have not asserted a sufficiently limited time period for even the
13 defense to ascertain when the People maintain the alleged acts to place. And as to Count 8 and
14 Count 9, the defense cannot even ascertain what the alleged “lewd act” is to which the People
15 are referring.

16 At a minimum, the defense is entitled to learn from the accusatory pleading what event(s)
17 allegedly took place and the realistic time frame within which it could have occurred.

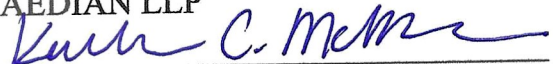
18 **S. Incorporation of Mr. Martinez’ Penal Code Section 782 Motion**

19 On or about May 5, 2023, Mr. Martinez filed and served his Penal Code section 782
20 Motion seeking to admit prior sexual conduct of the complaining witnesses. That Motion in
21 incorporated into Mr. Martinez’ trial brief for the Court’s consideration.

22 **T. Incorporation of Mr. Martinez’ Motion For Jury Questionnaire**

23 On or about May 5, 2023, Mr. Martinez filed and served his motion for a jury
24 questionnaire. That Motion in incorporated into Mr. Martinez’ trial brief for the Court’s
25 consideration.

26 DATED: July 16, 2023

27 KAEDIAN LLP
By: 
KATHERINE C. MCBROOM
Attorney for Defendant
PEDRO MARTINEZ

DECLARATION

1 8. On May 29, 2023, the defense emailed DDA Pribble requested further information
2 concerning the People’s experts in compliance of Penal Code section 1054.1(f). Attached here
3 as Exhibit F is a true and correct copy of attorney Ian Wallach’s May 29, 2023 email to DDA
4 Pribble. To date, the defense has not received a response to its email requesting expert
5 disclosures in compliance with Penal Code section 1054.1(f).

6 9. The SBSB performed a polygraph on Mr. Martinez on January 23, 2019. The
7 written report states that the test is inconclusive. The People provided us with a written report
8 summarizing the test and the result but none of the actual testing results – i.e., charts generated
9 by the polygraph machine.

10 10. Accordingly, on May 8, 2023, defense counsel requested the testing data,
11 including charts, relating to the polygraph test. Attached here as Exhibit G is a true and correct
12 copy of Ian Wallach’s May 8, 2023 discovery request to DDA Pribble.

13 11. On May 9, 2023, not having received a response to the discovery request, attorney
14 Ian Wallach sent a second discovery request. Attached here as Exhibit H is a true and correct
15 copy of the May 9, 2023 discovery request.

16 12. DDA Pribble responded that the Sheriffs Department’s “systems are down” and
17 that the requested reports “cannot be obtained at this time.” Attached here as Exhibit I is a true
18 and correct copy of DDA Pribble’s May 9, 2023 response to the defense’s request for discovery
19 related to the polygraph.

20 13. On May 11, 2023, Mr. Martinez filed a Motion to Compel, among other things,
21 the actual printouts and data (“polygraph tracing and hand scoring notes”) relied upon by the
22 SBSB polygrapher on January 23, 2019.

23 14. On the hearing date, May 22, 2023, the Court stated the defense was entitled to
24 such materials, and ordered the defense to provide areas, other than the SBSB database (which
25 at the time was compromised) where the materials could be located. DDA Pribble represented
26 to the Court that she would take steps to locate the materials in the other areas suggested by
27 defense. The defense agreed to take the Motion off calendar based on DDA Pribble’s
28 representation.

1 15. On May 24, 2023, defense counsel memorialized what had transpired in Court.
2 Attached hereto as Exhibit J is a true and correct copy of Ian Wallach's May 24, 2023 email to
3 DDA Pribble.

4 16. On May 30, 2023, DDA Pribble responded, "I am informed that SBSO cannot
5 retrieve the data you have requested from their file system. This file system was the only place
6 the data was stored." Attached here as Exhibit K is a true and correct copy of DDA Pribble's
7 May 30, 2023 email.

8 17. On June 15, 2023, defense counsel Ian Wallach and I spoke with Supervising
9 Polygraph Examiner Michelle Coley. Within 10 minutes of the call, Ms. Coley provided, via
10 email, the charts and tracings from the polygraph test. Ms. Coley represented that she had not
11 been contacted by DDA Pribble. Despite DDA Pribble's representation to the defense and to
12 this Court, the polygraph documents were readily available and could have been produced by
13 the People in a matter of minutes.

14 18. Witness Magdalena Serna was deposed in a civil matter wherein complaining
15 witness Ismael R. seeks monetary damages against Hesperia Unified School District and Mr.
16 Martinez. Attached here as Exhibit L is a true and correct copy of an excerpt from Ms. Serna's
17 November 2, 2021 deposition.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Executed this 17th day of July 2023, at Los Angeles, California.

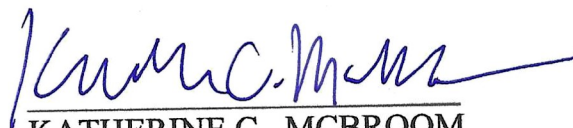
20
21 
22 KATHERINE C. MCBROOM

EXHIBIT A

1 LAW OFFICES OF IAN WALLACH, P.C.
2 IAN M. WALLACH (SBN 237849)
3 iwallach@wallachlegal.com
4 5777 W. Century Blvd., Ste. 750
5 Los Angeles, CA 90045
6 Telephone: (213) 375-0000
7 Facsimile: (213) 402-5516

8 KAEDIAN LLP
9 KATHERINE C. MCBROOM (SBN 223559)
10 kmcbroom@kaedianllp.com
11 8383 Wilshire Blvd., Ste. 210
12 Beverly Hills, CA 90211
13 Telephone: (310) 893-3372
14 Facsimile: (310) 893-3191

15 Attorneys for Defendant
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 v.

22 Plaintiff,

23 PEDRO MARTINEZ,

24 Defendant.

25 Case: FVI19000218

26 **DEFENDANT PEDRO MARTINEZ'S**
27 **REQUEST FOR NOTICE OF INTENT TO**
28 **OFFER PROOF OF UNCHARGED**
MISCONDUCT

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

31 In their initial Complaint in this matter, the People included a boilerplate Evidence Code
32 section 1108 notice stating that they intend to "move to admit evidence consistent with the defendant's
33 rap sheet and law enforcement reports." The People have yet to produce evidence and/or identify
34 specific prior acts of misconduct, leaving the defense to speculate as to what the People intend to

1 admit at trial. Pursuant to Penal Code sections 1054.1 and 1054.7, Defendant Pedro Martinez (“Mr.
2 Martinez”) hereby requests that the People provide him with notice of their intent to offer proof of
3 specific uncharged acts of misconduct at trial and to produce all related materials, including witness
4 contact information and statements.

5
6 DATED: March 23, 2023

KAEDIAN LLP

7
8 By:



9 IAN M. WALLACH
10 KATHERINE C. MCBROOM
11 Attorneys for Defendant
12 PEDRO MARTINEZ
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28

1 **PROOF OF SERVICE**

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

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

5 On March 23, 2023, I served the following document(s) described as: **DEFENDANT**
6 **PEDRO MARTINEZ'S REQUEST FOR NOTICE OF INTENT TO OFFER PROOF OF**
7 **UNCHARGED MISCONDUCT** in this action by placing true copies thereof enclosed in sealed
8 envelopes and/or packages addressed as follows:

9 Deena M. Pribble, DDA
10 San Bernardino County District Attorney's Office
11 14455 Civic Dr Ste 300,
12 Victorville, CA 92392-2312
13 E-Mail: DPribble@sbcda.org

- 14 **BY MAIL:** I deposited such envelope in the mail at 8383 Wilshire Blvd. Suite 210, Beverly
15 Hills, CA 90211. The envelope was mailed with postage thereon fully prepaid. I am "readily
16 familiar" with the firm's practice of collection and processing correspondence for mailing. It
17 is deposited with the U.S. Postal Service on that same day in the ordinary course of business.
18 I am aware that on motion of the party served, service is presumed invalid if postal
19 cancellation date or postage meter date is more than one (1) day after date of deposit for
20 mailing in affidavit.
- 21 **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to
22 California Rules of Court. The telephone number of the sending facsimile machine was (310)
23 893-3191. The name(s) and facsimile machine telephone number(s) of the person(s) served
24 are set forth in the service list.
- 25 **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above
26 addressee(s).
- 27 **BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles, California, I
28 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 March 23, 2023 at Los Angeles, California.



TRACY VENA

EXHIBIT B

From: [Pribble, Deena](#)
To: [Ian Michael Wallach](#); [Kacey McBroom](#); [Tracy Vena](#)
Subject: Pedro Martinez 1108 notice
Date: Tuesday, May 30, 2023 7:21:47 PM
Attachments: [image001.png](#)

Counsel:

Pursuant to Evidence Code section 1108 I intend on Millie Moran to testify. The subject of her testimony has previously been provided to you. Please see discovery bates stamped pages 140-158.

Regards,

Deena M. Pribble
Lead Deputy District Attorney
Family Violence Unit - Victorville
San Bernardino County District Attorney
Office: (760) 243-8600
Desk: (760) 243-8616



CONFIDENTIALITY NOTICE: This communication contains legally privileged and confidential information sent solely for the use of the intended recipient. If you are not the intended recipient of this communication you are not authorized to use it in any manner, except to immediately destroy it and notify the sender.

EXHIBIT C

From: [Ian Michael Wallach](#)
To: [Deena Pribble](#)
Cc: [Kacey McBroom](#)
Subject: People v. Pete Martinez, Case No. FVI19000218 (Sup. Ct. CA, Riverside Cry)
Date: Tuesday, April 4, 2023 11:57:56 AM
Attachments: [Malmgren CV 2021.pdf](#)
[Fee Sched October 2020.pdf](#)
[McAuliff CV F"21.pdf](#)
[20200412 ROBIN SAX RESUME .pdf](#)
[Romanoff- CV.pdf](#)
Importance: High

DDA Pribble,

Pursuant to § 2034.230 and other authority, Defendant Pete Martinez (“Defendant”) demands that a mutual exchange of expert witness identification and substance be made within 20 days of this disclosure.

Defendant's disclosure of expert witnesses that we intend to call at trial is as follows:

1. Judy Malmgren BSN, RN, SANE-A
800 Grove Ct.
Loveland, CO 80537
(805) 252-6316
Jmalmgren4n6rn@gmail.com

Nurse Malmgren is a Forensic Nurse Consultant/Expert Witness who will be called to give opinions interpreting the results of the SART reports of the complaining witnesses. It is expected that she will testify that no corroborating evidence was discovered during either SART exam of the complaining witnesses. Her CV and fee statement are attached.

2. Bradley McAuliff, J.D., Ph.D.,
Department of Psychology
California State University, Northridge
18111 Nordhoff Street
Northridge, CA 91330-8255
Phone: (818) 677-2810
[E-mail: bradley.mcauliff@csun.edu](mailto:bradley.mcauliff@csun.edu)

Dr. McAuliff is an attorney and professor of Psychology who will be called to give opinion as to child memory and suggested memory. It is expected that he will address reliability of such testimony and its capacity to be affected by certain interrogation techniques, and which techniques have proved to be or not be reliable and upon what grounds. He is further expected to testify as to the science of false memory and false memory recall. It is expected that he will discuss transferred trauma. Dr. MfcAuliff’s CV is attached.

3. Robin Sax, J.D., MSW
287 S Robertson Blvd # 375
Beverly Hills, CA 90211-2810

Robin Sax is a former Sex Crimes Prosecutor and mental health therapist with experience on proper interrogation techniques used by law enforcement to ensure reliability in forenisc

interviews,, including the manner and technique of the interviews of the complaining witnesses in this matter. For approximately nine years she has conducted forensic interviews for the Los Angeles District Attorney's Office at Stuart House / UCLA. She currently is a clinical therapist and conducts forensic interviews for the Los Angeles Police Department at the Los Angeles County / USC Family Justice Center. She is frequently consulted by both the prosecution and defense in cases where sexual abuse, child abuse, or domestic violence has been alleged. She has acted as a consulting expert in Riverside, Los Angeles, Santa Barbara and Ventura Counties. She has been qualified as an expert in Riverside, Los Angeles, Ventura, and Orange Counties. She has authored two books and has conducted hundreds of trainings on the investigation and prosecution of child sexual assault. Robin Sax's CV is attached.

4. Richard Romanoff Ph.D.
10780 Santa Monica Boulevard, Suite 460
Los Angeles, CA 90025-4749
Telephone: (310) 443-1570

Dr. Romanoff has performed multiple Stoll exams throughout the State of California and shall implement standardized written personality tests which he has analyzed and will opine as to, based upon interviews and professional interpretation of standardized written personality tests, that Mr. Martinez does not display signs of "deviance" or "abnormality." His CV is attached.

The Law Offices of Ian Wallach, P.C.
5777 West Century Boulevard, Suite 750
Los Angeles, CA 90045
T: 213.375.0000 · F: 213.402.5516

www.wallachlegal.com

Please consider the environment before printing this e-mail.

PLEASE NOTE: This message, including any attachments, may include privileged, confidential, and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system. Thank you.

EXHIBIT D

From: [Kacey McBroom](#)
To: [Pribble, Deena](#)
Cc: [Tracy Vena; Ian Wallach \(Work\)](#)
Subject: Martinez - Defense Expert Richard Romanoff
Date: Friday, June 23, 2023 5:32:00 PM
Attachments: [image001.png](#)
[Ismael R. Third Amended Complaint.pdf](#)
[X'zavier M. Second Amended Complaint.pdf](#)
[Mille M. Second Amended Complaint.pdf](#)
[20200722_121843_both_bathrooms&janitor_closet.jpg](#)
[20200722_121658_resized_2_cafeteria_bathrooms_&_janitor_closet.jpg](#)
[20200722_121709_resized_2.jpg](#)
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[20200722_121854_close_up_janitorcloset_&_bathroom_resized_2.jpg](#)
[20200722_122026_resized_2.jpg](#)
[20200722_122032_inside_janitor_closetresized_2.jpg](#)
[20200722_122036_resized_2.jpg](#)
[20200722_122043_further_inside_closet_resized_2.jpg](#)
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[20200722_122759_resized_1.jpg](#)
[20200722_122805_resized_1.jpg](#)
[20200722_122810_resized_1.jpg](#)
[20200722_122937_resized_1.jpg](#)
[Maple elementary school layout.pdf](#)
[Deposition Transcript.pdf](#)
[Moran Deposition Transcript.pdf](#)

Hi Deena,

As disclosed on April 4, 2023, Dr. Richard Romanoff, a clinical and forensic psychologist, will opine that Mr. Martinez does not display signs of sexual deviance. I note that there is an error in the April 2023 disclosure. Dr. Romanoff did not and does not intend to perform any standardized personality tests. Rather he relied on discovery materials in both the criminal and civil cases (including interviews of Mr. Martinez, his family, and individuals at Maple elementary, as well as deposition testimony, and interviews of child witnesses), his extensive interviews with Mr. Martinez and his wife (we've provided the rough notes from these interviews), the Static 99 (we've produced this document), and his many years of experience in the field of SVPs and sexual deviance (including many hundreds of interviews of individuals charged with and/or convicted of child molestation). He has not drafted any written reports.

As you know, no expert can testify as to ultimate facts in a case – no one can opine that, based on his/he analysis, a crime did or did not occur. However, the defense may present character evidence, in the form of expert testimony, to demonstrate that Mr. Martinez does not exhibit or have the common behaviors associated with a sexual deviant and/or someone that has a prurient interest in children. Pursuant to *People v. Stoll* (1989) 49 Cal.3d 1136, criminal defendants are authorized to use character evidence, including expert opinion, to prove conduct in conformity with character as allowed by Evidence Code section 1102. Criminal defendants may offer lack of deviance as circumstantial evidence that they are unlikely to have committed the charged acts of molestation.

A *Stoll* opinion may be based on matter perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible. (Evid. Code section 801.) Further, under *Stoll*, no precise legal rules dictate the proper basis for an expert's analysis of a patient's mind to make judgements about his behavior.

Over the past several decades, Dr. Romanoff has interviewed from 500-750 individuals accused and/or convicted of child molestation. In fact, from 1996 through 2013, he served on the California state panel evaluating individuals pursuant to Welfare and Institutions Code section 6600, the California Sexual Violent Predator Statute. He is familiar with studies and literature on the topic of sexual predators, including child molesters. Here, Dr. Romanoff used his education, expertise, and vast experience evaluating accused and convicted child molesters when evaluating Mr. Martinez. He interviewed Mr. Martinez at length regarding his life, from birth to the present. Additionally, he interviewed Mr. Martinez' wife. Based on his review of the discovery, his familiarity with the characteristics of sexual deviance, his extensive interaction with Mr. Martinez, Mr. Martinez 's complete lack of any criminal history or similar prior accusations, and Mr. Martinez' reported life history (details of which are included in his notes), Dr. Romanoff concluded that Mr. Martinez does not display any signs of sexual deviance, including a prurient interest in children.

Dr. Romanoff reviewed the following materials:

- Operative civil complaints as follows:
 - M.M. v. Hesperia School District
 - X. M. v. Hesperia School District
 - Billy Roe, et al. v. Hesperia School District
- All police reports in this matter.
- All audio/video evidence the People produced to the defense
- SART Reports
- Search warrants and affidavits
- All CAC interviews
- Photographs of Maple Elementary
- Depiction of the Maple Elementary School layout
- Deposition transcripts for Magdalena Serna, Detective Connors, X'zavier M., Millie M.

Attached here are the items above which have not yet been produced: (1) 3 Civil Complaints; (2) Photographs of Maple Elementary; (3) layout of school (I believe you have this); (4) Deposition Transcript for XM; and (5) Deposition Transcript for M.M.

You are free to speak with Dr. Romanoff concerning any questions you may have concerning his analysis and the basis of his findings. He's happy to speak with you. His office phone number is (310) 443-1570. His email address is richard@romanoffphd.com.

Many thanks
Kacey



Katherine "Kacey" McBroom
Criminal Defense Attorney

Los Angeles Office

8383 Wilshire Boulevard, Suite 210

Beverly Hills, CA 90211

Office: (310) 893-3372

Direct: (310) 666-5198

Fax: (310) 935-0323

Email: kmcbbroom@kaedianllp.com

Website: www.arrestedincali.com

EXHIBIT E

From: [Pribble, Deena](#)
To: [Ian Michael Wallach](#); [Kacey McBroom](#)
Subject: People v. Pedro Martinez
Date: Sunday, May 28, 2023 10:16:14 AM
Attachments: [image001.png](#)
[CurriculumVitaeVTMarch2023copy_copy.pdf](#)
[CV.b.carmichael.2023.Winter \(003\).pdf](#)
[CV2020 \(002\) VT.pdf](#)
[Maltby Fee Schedule Criminal.pdf](#)
[Maltby Court CV.pdf](#)
[Ward CV 2023.pdf](#)

Counsel,

Attached please find the curricula vitae for the People's expert witnesses.

I intend to call these experts to testify to Child Sexual Abuse Accommodation Syndrome (CSAAS); specifically that CSAAS describes and explains common reactions of children who are molested. This will include the five stages encompassed in child sexual abuse accommodation syndrome: 1) secrecy, 2) helplessness, 3) accommodation, 4) disclosure, and 5) reaction.

These experts will further testify to battered person syndrome, counterintuitive victim behaviors, forensic interviewing of children, autobiographical and traumatic injury, and the psychology behind children's memory and suggestibility.

Additionally, I am in receipt of your April 4, 2023 correspondence, in which you identified your expert witnesses. After reviewing your correspondence, I respectfully request that you immediately provide copies of the following documents:

1. Any and all reports, interviews, data, notes and conclusions of Judy Malmgren BSN, RN, SANE-A SART pertaining to her anticipated testimony 'that no corroborating evidence was discovered during either SART exam of the complaining witnesses';
2. Any and all interviews of the witness, reports, data, notes and conclusions of Bradley McAuliff, J.D., Ph.D. related to 'the reliability of a child's testimony, a child's capacity to be affected by certain interrogation techniques, which techniques prove to be/not be reliable and upon what grounds, science of false memory, false memory recall, and transferred trauma';
3. Any and all interviews of the witness including reports, data, notes and conclusions of Robin Sax, J.D., MSW pertaining to her review of 'the manner and technique of the interviews of the complaining witnesses in this matter';
4. Any and all interviews, reports, data, notes, records, and complete tests such as the mentioned 'standardized written personality tests,' and any other tests, questions and answers used by Richard Romanoff Ph.D. to form his opinion that Mr. Martinez does not display signs of "deviance" or "abnormality"; and
5. All depositions, witness statements, and unredacted Child and Family Services records obtained in response to Defendant Martinez's 827 Petitions for Disclosure of Juvenile

Case Files of Ismael R. and Xavier B.

6. All interviews, depositions, video interviews, and audio recordings of the **twenty-two** witnesses that Mr. Wallach announced to the court on 5/9 that he intended to call at trial.

Please do not hesitate to contact me if you have any questions or concerns or need any other information relating to the above request.

Deena M. Pribble
Lead Deputy District Attorney
Family Violence Unit - Victorville
San Bernardino County District Attorney
Office: (760) 243-8600
Desk: (760) 243-8616



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EXHIBIT F

From: [Ian Michael Wallach](#)
To: [Pribble, Deena](#)
Cc: [Kacey McBroom](#); [Tracy Vena](#)
Subject: Re: People v. Pedro Martinez
Date: Monday, May 29, 2023 8:11:28 PM
Attachments: [image001.png](#)
[CurriculumVitaeVTMarch2023copy copy.pdf](#)
[CV.b.carmichael.2023.Winter \(003\).pdf](#)
[CV2020 \(002\) VT.pdf](#)
[Maltby Fee Schedule Criminal.pdf](#)
[Maltby Court CV.pdf](#)
[Ward CV 2023.pdf](#)

Counsel,

I am in receipt of your correspondence below of May 28, 2023 containing identifying information regarding Veronica Thomas, Ph.D.; Blake D. Carmichael, Ph.D; Lauren Maltby, Ph.D., and Jody Ward, Ph.D.

You state that these experts will testify to:

Child Sexual Abuse Accommodation Syndrome (CSAAS); specifically that CSAAS describes and explains common reactions of children who are molested. This will include the five stages encompassed in child sexual abuse accommodation syndrome: 1) secrecy, 2) helplessness, 3) accommodation, 4) disclosure, and 5) reaction. These experts will further testify to battered person syndrome, counterintuitive victim behaviors, forensic interviewing of children, autobiographical and traumatic injury, and the psychology behind children's memory and suggestibility.

You have not provided any information allowing one to discern which expert will testify as to what opinion. You have not informed the defense as to who will testify to what. Cal. Pen. Code Sec. 1054.1(f) requires, at a bare minimum, that the noticed party be informed as to who will testify and what that specific expert's opinion will be.

Please let us know promptly if you disagree.

As you are aware, the defense has already complied with its similar obligation.

This demand is meant to ensure compliance with your obligations under, *inter alia*, Cal. Pen. Code Sec. 1054.1(f) and is not a waiver of other available objections or responses.

Please let us know immediately whether or not you intend to supplement this notice and if so, by when.

Additionally, please provide an update as to your efforts to secure the polygraph tracings and raw scoring notes which you represented to the Court you would undertake at our last appearance. We understand that Detective Tracy recorded placing a copy thereof in her file, so please add that location to the four others referenced in our email of May 24, 2023. For convenience, those areas are reiterated here:

1. Within the hard drive of the polygraph machine itself, or within any memory system associated with the polygraph machine itself;

2. In any files maintained by Polygrapher Debbie Malm;
3. In any files maintained by Supervising Polygraph Examiner Michelle Coley; and (but not limited to)
4. Attached to any “sent” emails that contained the data, including, but not limited to, emails that were sent to the Sheriff’s Department for the purpose of preservation for this case.

Sincerely,

Ian Wallach

The Law Offices of Ian Wallach, P.C.
5777 West Century Boulevard, Suite 750
Los Angeles, CA 90045
T: 213.375.0000 · F: 213.402.5516

www.wallachlegal.com

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On May 28, 2023, at 10:16 AM, Pribble, Deena <DPribble@sbcda.org> wrote:

Counsel,

Attached please find the curricula vitae for the People's expert witnesses.

I intend to call these experts to testify to Child Sexual Abuse Accommodation Syndrome (CSAAS); specifically that CSAAS describes and explains common reactions of children who are molested. This will include the five stages encompassed in child sexual abuse accommodation syndrome: 1) secrecy, 2) helplessness, 3) accommodation, 4) disclosure, and 5) reaction.

These experts will further testify to battered person syndrome, counterintuitive victim behaviors, forensic interviewing of children, autobiographical and traumatic injury, and the psychology behind children’s memory and suggestibility.

Additionally, I am in receipt of your April 4, 2023 correspondence, in which you identified your expert witnesses. After reviewing your correspondence, I respectfully request that you immediately provide copies of the following documents:

1. Any and all reports, interviews, data, notes and conclusions of Judy

Malmgren BSN, RN, SANE-A SART pertaining to her anticipated testimony ‘that no corroborating evidence was discovered during either SART exam of the complaining witnesses’;

2. Any and all interviews of the witness, reports, data, notes and conclusions of Bradley McAuliff, J.D., Ph.D. related to ‘the reliability of a child’s testimony, a child’s capacity to be affected by certain interrogation techniques, which techniques prove to be/not be reliable and upon what grounds, science of false memory, false memory recall, and transferred trauma’;
3. Any and all interviews of the witness including reports, data, notes and conclusions of Robin Sax, J.D., MSW pertaining to her review of ‘the manner and technique of the interviews of the complaining witnesses in this matter’;
4. Any and all interviews, reports, data, notes, records, and complete tests such as the mentioned ‘standardized written personality tests,’ and any other tests, questions and answers used by Richard Romanoff Ph.D. to form his opinion that Mr. Martinez does not display signs of "deviance" or "abnormality"; and
5. All depositions, witness statements, and unredacted Child and Family Services records obtained in response to Defendant Martinez’s 827 Petitions for Disclosure of Juvenile Case Files of Ismael R. and Xavier B.
6. All interviews, depositions, video interviews, and audio recordings of the **twenty-two** witnesses that Mr. Wallach announced to the court on 5/9 that he intended to call at trial.

Please do not hesitate to contact me if you have any questions or concerns or need any other information relating to the above request.

Deena M. Pribble
Lead Deputy District Attorney
Family Violence Unit - Victorville
San Bernardino County District Attorney
Office: (760) 243-8600
Desk: (760) 243-8616



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EXHIBIT G

From: [Ian Wallach](#)
To: [Pribble, Deena](#)
Cc: [Kacey McBroom](#); [Tracy Vena](#)
Subject: California vs. Pedro Martinez, Case No. : FVI19000218 -- Informal Discovery Request
Date: Monday, May 8, 2023 9:29:38 AM
Attachments: [Polygraph Report.pdf](#)
[REDACTED] (V1) Medical Report.pdf

DDA Pribble,

There are three items of discovery that we realized have not been provided. Please provide them immediately. They are listed below:

1. Actual Polygraph Testing Results from the January 23, 2019 Polygraph. Specifically, we need (the sheets generated from the polygraph machine that were reviewed by Certified Polygraph Examiner Debbie Malm and reviewed by (a copy of her report, for convenience, is attached) and reviewed by Supervising Polygraph Examiner Michelle Coley (who quality controlled the charts we are seeking to review). The attached report identifies the data that we are entitled to.
2. The Video (referred to in the lower right quadrant of page 2) and all photos referred to in the Child/Adolescent Sexual Abuse Examination report dated January 21, 2019. (also attached for convenience)

Please confirm receipt, and please either let us know when we can expect to receive these items or whether and why you have any objection to doing so at this time.

Thank you for your cooperation.

The Law Offices of Ian Wallach, P.C.
5777 West Century Boulevard, Suite 750
Los Angeles, CA 90045
T: 213.375.0000 · F: 213.402.5516

www.wallachlegal.com

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EXHIBIT H

From: [Ian Michael Wallach](#)
To: [Pribble, Deena](#)
Cc: [Kacey McBroom](#); [Tracy Vena](#)
Subject: Fwd: California vs. Pedro Martinez, Case No. : FVI19000218 -- Informal Discovery Request
Date: Tuesday, May 9, 2023 12:51:07 PM
Attachments: [Polygraph Report.pdf](#)
[\[REDACTED\] \(V1\) Medical Report.pdf](#)

DDA Pribble,

Please advise as to when we will receive the documents below. Absent immediate production, we will need to seek a motion to compel.

Please also let us know if you are willing to stipulate to the authenticity of the DCFS records or if we need to subpoena the custodian of records.

Sincerely,

Ian Wallach

The Law Offices of Ian Wallach, P.C.
5777 West Century Boulevard, Suite 750
Los Angeles, CA 90045
T: 213.375.0000 · F: 213.402.5516

www.wallachlegal.com

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Begin forwarded message:

From: Ian Wallach <iwallach@wallachlegal.com>
Subject: California vs. Pedro Martinez, Case No. : FVI19000218 -- Informal Discovery Request
Date: May 8, 2023 at 9:29:03 AM PDT
To: "Pribble, Deena" <DPribble@sbcda.org>
Cc: Kacey McBroom <kmcbroom@kaedianllp.com>, Tracy Vena <tvena@kaedianllp.com>

DDA Pribble,

There are three items of discovery that we realized have not been provided. Please provide them immediately. They are listed below:

1. Actual Polygraph Testing Results from the January 23, 2019 Polygraph. Specifically, we need (the sheets generated from the

polygraph machine that were reviewed by Certified Polygraph Examiner Debbie Malm and reviewed by (a copy of her report, for convenience, is attached) and reviewed by Supervising Polygraph Examiner Michelle Coley (who quality controlled the charts we are seeking to review). The attached report identifies the data that we are entitled to.

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Please confirm receipt, and please either let us know when we can expect to receive these items or whether and why you have any objection to doing so at this time.

Thank you for your cooperation.

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EXHIBIT I



Begin forwarded message:

From: "Pribble, Deena" <DPribble@sbcda.org>
Subject: RE: California vs. Pedro Martinez, Case No. : FVI19000218 -- Informal Discovery Request
Date: May 9, 2023 at 5:45:51 PM PDT
To: Ian Michael Wallach <iwallach@wallachlegal.com>

Mr. Wallach,

I do not have in my possession any of the polygraph material that you are requesting. I have requested the items from the Sheriff's Department. However, their systems are down and the reports cannot be obtained at this time.

Also, I do not have the video that you are requesting. I have requested all items from Whittier Hospital where the SART exam was conducted. I did not receive anything relevant to this case.

Deena

From: Ian Michael Wallach <iwallach@wallachlegal.com>
Sent: Tuesday, May 9, 2023 12:51 PM
To: Pribble, Deena <DPribble@sbcda.org>
Cc: McBroom Kacey <kmcbroom@kaedianllp.com>; Vena Tracy <tvena@kaedianllp.com>
Subject: Fwd: California vs. Pedro Martinez, Case No. : FVI19000218 -- Informal

Discovery Request

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. If you suspect this is a phishing or malicious email, please contact the DA HelpDesk immediately for assistance.

DDA Pribble,

Please advise as to when we will receive the documents below. Absent immediate production, we will need to seek a motion to compel.

Please also let us know if you are willing to stipulate to the authenticity of the DCFS records or if we need to subpoena the custodian of records.

Sincerely,

Ian Wallach

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Begin forwarded message:

From: Ian Wallach <iwallach@wallachlegal.com>

Subject: California vs. Pedro Martinez, Case No. : FVI19000218 --

Informal Discovery Request

Date: May 8, 2023 at 9:29:03 AM PDT

To: "Pribble, Deena" <DPribble@sbcd.org>

Cc: Kacey McBroom <kmcbroom@kaedianllp.com>, Tracy Vena <tvena@kaedianllp.com>

DDA Pribble,

There are three items of discovery that we realized have not been provided. Please provide them immediately. They are listed below:

1. Actual Polygraph Testing Results from the January 23, 2019 Polygraph. Specifically, we need (the sheets generated from the polygraph machine that were reviewed by Certified Polygraph Examiner Debbie Malm and reviewed by (a copy of her report, for convenience, is attached) and reviewed by Supervising Polygraph Examiner Michelle Coley (who quality controlled the charts we are seeking to review). The attached report identifies the data that we are entitled to.
2. The Video (referred to in the lower right quadrant of page 2) and all photos referred to in the Child/Adolescent Sexual Abuse Examination report dated January 21, 2019. (also attached for convenience)

Please confirm receipt, and please either let us know when we can expect to receive these items or whether and why you have any objection to doing so at this time.

Thank you for your cooperation.

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EXHIBIT J

From: [Ian Michael Wallach](#)
To: [Pribble, Deena](#)
Cc: [Kacey McBroom](#); [Tracy Vena](#)
Subject: People v. Martinez, FVI19000218. Areas for Location of Raw Polygraph Data for Januioary 23, 2019 of Pedro Martinez
Date: Wednesday, May 24, 2023 1:29:06 PM

Ms. Pribble,

Per the Court's instruction, this letter serves to identify at least four other areas where the sought polygraph tracings and scoring notes can be located, in addition to locating them from the Sheriff's office database.

The items sought should be located:

1. Within the hard drive of the polygraph machine itself, or within any memory system associated with the polygraph machine itself;
2. In any files maintained by Polygrapher Debbie Malm;
3. In any files maintained by Supervising Polygraph Examiner Michelle Coley; and (but not limited to)
4. Attached to any "sent" emails that contained the data, including, but not limited to, emails that were sent to the Sheriff's Department for the purpose of preservation for this case.

Please let us know when we can be updated as to the efforts to locate and, hopefully, production of the polygraph tracings and the hand scoring notes.

Sincerely,

Ian Wallach

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Los Angeles, CA 90045
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EXHIBIT K

From: [Pribble, Deena](#)
To: [Ian Michael Wallach](#)
Cc: [Kacey McBroom](#); [Tracy Vena](#)
Subject: RE: People v. Pedro Martinez
Date: Tuesday, May 30, 2023 6:37:48 PM
Attachments: [image001.png](#)

Counsel:

Please refer to my original email dated May 28, 2023 regarding the scope of the anticipated testimony. Please be advised there are no written or recorded statements or reports as outlined in Penal Code section 1054.1(f). Please also refer to CalCrim 1193. I have provided you notice of all potential experts I intend to use.

Regarding the polygraph information you are seeking, I am informed that SBSO cannot retrieve the data you have requested from their file system. This file system was the only place that the data was stored.

Regards,

Deena M. Pribble

From: Ian Michael Wallach <iwallach@wallachlegal.com>
Sent: Monday, May 29, 2023 8:11 PM
To: Pribble, Deena <DPribble@sbcda.org>
Cc: McBroom Kacey <kmcbroom@kaedianllp.com>; Vena Tracy <tvena@kaedianllp.com>
Subject: Re: People v. Pedro Martinez

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Counsel,

I am in receipt of your correspondence below of May 28, 2023 containing identifying information regarding Veronica Thomas, Ph.D.; Blake D. Carmichael, Ph.D; Lauren Maltby, Ph.D., and Jody Ward, Ph.D.

You state that these experts will testify to:

Child Sexual Abuse Accommodation Syndrome (CSAAS); specifically that CSAAS describes and explains common reactions of children who are molested. This will include the five stages encompassed in child sexual abuse accommodation syndrome: 1) secrecy, 2) helplessness, 3) accommodation, 4) disclosure, and 5) reaction. These experts will further testify to battered

person syndrome, counterintuitive victim behaviors, forensic interviewing of children, autobiographical and traumatic injury, and the psychology behind children's memory and suggestibility.

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Please let us know promptly if you disagree.

As you are aware, the defense has already complied with its similar obligation.

This demand is meant to ensure compliance with your obligations under, *inter alia*, Cal. Pen. Code Sec. 1054.1(f) and is not a waiver of other available objections or responses.

Please let us know immediately whether or not you intend to supplement this notice and if so, by when.

Additionally, please provide an update as to your efforts to secure the polygraph tracings and raw scoring notes which you represented to the Court you would undertake at our last appearance. We understand that Detective Tracy recorded placing a copy thereof in her file, so please add that location to the four others referenced in our email of May 24, 2023. For convenience, those areas are reiterated here:

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4. Attached to any "sent" emails that contained the data, including, but not limited to, emails that were sent to the Sheriff's Department for the purpose of preservation for this case.

Sincerely,

Ian Wallach

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On May 28, 2023, at 10:16 AM, Pribble, Deena <DPribble@sbcda.org> wrote:

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2. Any and all interviews of the witness, reports, data, notes and conclusions of Bradley McAuliff, J.D., Ph.D. related to 'the reliability of a child's testimony, a child's capacity to be affected by certain interrogation techniques, which techniques prove to be/not be reliable and upon what grounds, science of false memory, false memory recall, and transferred trauma';
3. Any and all interviews of the witness including reports, data, notes and conclusions of Robin Sax, J.D., MSW pertaining to her review of 'the manner and technique of the interviews of the complaining witnesses in this matter';
4. Any and all interviews, reports, data, notes, records, and complete tests

such as the mentioned 'standardized written personality tests,' and any other tests, questions and answers used by Richard Romanoff Ph.D. to form his opinion that Mr. Martinez does not display signs of "deviance" or "abnormality"; and

5. All depositions, witness statements, and unredacted Child and Family Services records obtained in response to Defendant Martinez's 827 Petitions for Disclosure of Juvenile Case Files of Ismael R. and Xavier B.
6. All interviews, depositions, video interviews, and audio recordings of the **twenty-two** witnesses that Mr. Wallach announced to the court on 5/9 that he intended to call at trial.

Please do not hesitate to contact me if you have any questions or concerns or need any other information relating to the above request.

Deena M. Pribble
Lead Deputy District Attorney
Family Violence Unit - Victorville
San Bernardino County District Attorney
Office: (760) 243-8600
Desk: (760) 243-8616



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EXHIBIT L

1 BY MS. GRAY:

2 Q When you say that you searched for an
3 attorney to help him, Mr. Martinez was arrested
4 criminally. You understand that?

5 A And he should be, yes. 10:31:34

6 Q I understand that. And you were looking
7 for a lawyer to protect him civilly in a civil
8 context?

9 A I wanted him to be compensated for all the
10 trauma he was put under and everything bad that 10:31:47
11 Mr. Martinez did to him. I thought that somebody
12 should pay.

13 Q Okay. And when did it occur to you that
14 Hesperia Unified School District was responsible for
15 what happened to Billy Roe? 10:32:02

16 A Because that's where he attended, and they
17 didn't do their job to protect him.

18 Q Did you do any investigation yourself to
19 determine what was going on at Maple Elementary
20 School so that they -- so that the school district 10:32:18
21 did not protect Billy Roe?

22 A We talked to people in the office when we
23 first found out that one of the kids was touching
24 Billy (name changed) or touching Billy Roe, and they
25 did nothing. We went a second time. They did 10:32:34

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 17, 2023, I served the following document(s) described as: **DEFENDANT PEDRO MARTINEZ' TRIAL BRIEF AND MOTIONS IN LIMINE** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

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

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

- BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to California Rules of Court. The telephone number of the sending facsimile machine was (310) 893-3191. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.
- 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 July 17, 2023 at Los Angeles, California.



TRACY VENA