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SAN BERNARDINO COUNTY  
SUPERIOR COURT, JOSHUA TREE DISTRICT

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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **FOR THE COUNTY OF SAN BERNARDINO**

21 THE PEOPLE OF THE STATE OF  
22 CALIFORNIA,

Case: FVI19000218

23 v.  
24 Plaintiff,

25 PEDRO MARTINEZ,  
26 Defendant.

**DEFENDANT PEDRO MARTINEZ'S  
SECOND MOTION FOR THE  
CONTENT OF THE PEOPLE'S  
PROPOSED REBUTTAL EXPERT  
WITNESS TESTIMONY.**

27 **DEFENDANT'S SECOND REQUEST TO KNOW WHAT EXPERT  
28 TESTIMONY THE PEOPLE ARE PLANNING TO SUBMIT ON REBUTTAL IF  
ALLOWED**

1           The People have stated their intent to call Jody Ward, a psychologist, as a rebuttal  
2 expert witness.

3           The People have not disclosed what expert testimony this proposed witness will  
4 offer.

5           The People have alluded to the possibility that Jody Ward will opine that  
6 standardized tests should be used when performing a Stoll Exam, to challenge Dr.  
7 Romanoff's assertion that they should not be used. **If the Court allows such testimony**  
8 **even in light of binding statutory law precluding such testimony due to non-**  
9 **compliance with notice rules dictated by the legislature, then the defense *concedes***  
10 **that Jody Ward could testify on this limited area.**

11           But the prosecutor also used words like "paraphilias" and "sadism" in passing. The  
12 defense, without more information, cannot discern:

- 13 (1) what paraphilias are;
- 14 (2) which paraphilias will be addressed and what evidence will they be based on;
- 15 (3) why the People, who have had Richard Romanoff's report since June 2023, gives rise  
16 to such testimony on rebuttal in light of their duty to present such evidence, after being  
17 properly noticed, during their case-in-chief;
- 18 (4) why Jody Ward, who's resume is silent as to paraphilias or her qualifications to testify  
19 on them, is qualified to testify to them on rebuttal;
- 20 (5) what reason – other than to again show the same photographs to the jury and to  
21 potentially call the defendant "a sadist" – allows the People to present such evidence;
- 22 (6) what evidence, if any, Jody Ward relied on when making her expert opinions;
- 23 (7) what peer-reviewed journals has Jody Ward been published in on the issue of  
24 paraphilias;
- 25 (8) what peer-reviewed journals has Jody Ward reviewed on the issue of paraphilias;
- 26 (9) How many individuals afflicted with paraphilias has Jody Ward personally treated or  
27 evaluated;

28

- 1 (10) For how long has Jody Ward known she may be called by the People as an expert  
2 on Paraphilias;
- 3 (11) Why Jody Ward's resume is silent as to expertise in the area of, or treatment of  
4 individuals afflicted with, paraphilias;
- 5 (12) What part of Dr. Romanoff's testimony compels a rebuttal on issues related to  
6 Paraphilias;
- 7 (13) Since the DSM-5 diagnostic criteria for paraphilia states explicitly that the patient  
8 must have experienced intense and recurrent sexual arousal from deviant fantasies for at  
9 least six months and must have acted on these impulses, what evidence in this case will  
10 Jody Ward rely on in support of any opinion;
- 11 (14) Whether Jody Ward has ever qualified before any court in the area of Paraphilias or  
12 sadism;
- 13 (15) When she was retained by the People to potentially address Paraphilias and at what  
14 rate;
- 15 (16) Is her real goal to get the words "Paraphilia" or "Sadist" in front of the jury, and  
16 what will be her basis for doing so; and
- 17 (17) any other basis for any other opinion she may offer.

18 The Court does not have this information.

19 The defense does not have this information.

20 The People refuse to provide this information.

21 Dr. Ward may testify on Thursday or Tuesday (if allowed).

22 Before granting permission for Dr. Ward to testify on these, or any other  
23 undisclosed areas, the defense directs the Court to the decision of the United States  
24 District Court in *United States v. Filer*, 2021 U.S. Dist. LEXIS 238621 (USDC N.D. Ill.).

25 *Filer* addressed the timing of last-minute expert witness disclosure. Rule 16,  
26 referred to in *Filer*, is the federal version of Cal. Penal Code §§ 1054.1 and 1054.7. It  
27 provides as follows:

28

1 (G) Expert Witnesses.

2 (i) Duty to Disclose. At the defendant's request, the government must disclose to  
3 the defendant, in writing, the information required by (iii) for any testimony that  
4 the government intends to use at trial under Federal Rules of Evidence 702, 703,  
5 or 705 during its case-in-chief, or during its rebuttal to counter testimony that the  
6 defendant has timely disclosed under (b)(1)(C). If the government requests  
7 discovery under the second bullet point in (b)(1)(C)(i) and the defendant  
8 complies, the government must, at the defendant's request, disclose to the  
9 defendant, in writing, the information required by (iii) for testimony that the  
10 government intends to use at trial under Federal Rules of Evidence 702, 703, or  
11 705 on the issue of the defendant's mental condition.

12 (ii) Time to Disclose. The court, by order or local rule, must set a time for the  
13 government to make its disclosures. The time must be sufficiently before trial to  
14 provide a fair opportunity for the defendant to meet the government's evidence.

15 (iii) Contents of the Disclosure. The disclosure for each expert witness must  
16 contain:

17 a complete statement of all opinions that the government will elicit from the  
18 witness in its case- in-chief, or during its rebuttal to counter testimony that the  
19 defendant has timely disclosed under (b)(1)(C);

20 the bases and reasons for them;

21 the witness's qualifications, including a list of all publications authored in the  
22 previous 10 years; and

23 a list of all other cases in which, during the previous 4 years, the witness has  
24 testified as an expert at trial or by deposition.

25 In addressing last-minute disclosure, *Filer* addressed a situation like here (except  
26 that in *Filer* a disclosure was actually made, only it was made the day before the expert  
27 was called to testify). The Court stated:

28 While Rule 16 only requires pre-trial disclosure of experts to be called during the  
case-in-chief, the Government does not have "carte blanche in every case to spring  
a surprise expert witness on an unsuspecting defendant who has long since  
disclosed his own expert's prospective testimony." *Id.*... As a result of the timing  
of the Government's disclosure of Markell's opinions on agency and equitable

1 ownership, Filer's counsel had less than twenty-four hours to prepare a cross-  
2 examination. This is insufficient time to develop a strategy to cross-examine both  
3 the substance of the new opinions, as well as the expert's professional credentials  
4 supporting the basis of these new opinions. *Id.* ("[N]o defense counsel, no matter  
5 how experienced, can fairly be asked to cross-examine on a moment's notice a  
6 witness who comes clothed with all the impressive credentials and specialized  
7 training of an expert and whose opinions and methods with respect to the case at  
8 hand have been subject to no prior scrutiny.")... Filer's counsel was not given a  
9 continuance to prepare for Markell's testimony. Moreover, because these theories  
10 were being explored for the first time, Filer's counsel had not had the opportunity  
11 to immerse themselves in the technicalities of agency and equitable ownership  
12 principles. Filer's attorneys therefore did not have a fair opportunity to cross  
13 examine Markell on aspects of his rebuttal testimony. The Court finds that there is  
14 a reasonable probability that allowing this testimony without sufficient cross  
15 prejudiced the jury. On these grounds, Filer is entitled to a new trial.

16 Like the Court in *Filer*, this court should not allow an expert witness to be sprung on the  
17 defense at a date and time when the defense could not adequately prepare.

18 In the present case:

19 The People have had Romanoff's report since June, 2023.

20 The People mentioned that Jody Ward may testify last week.

21 The Defense has made repeated requests to learn the content of the proposed  
22 testimony, and neither the Court nor the defense knows, at this time, one or two court  
23 days away from the proposed testimony, what the testimony will be.

24 The People have not disclosed why this proposed expert testimony was not a part  
25 of the People's case-in-chief.

26 The People have not disclosed why Jody Ward is qualified to testify on this subject  
27 matter.

28 The People have not provided a resume that mentions Jody Ward's qualifications  
to testify on this subject matter.

The People brought multiple unsuccessful challenges to the defense's timely expert  
witness disclosure, which both this Court and the pre-trial court found to be compliant  
and sufficient, so the People are aware of what the requirements are and have demanded  
such compliance.


1 As the Court reviews the present motion, neither the Court nor the defense knows  
2 the content of the proposed expert witness testimony.

3 In light of the above, testimony by Jody Ward, if allowed at all, should be limited  
4 to the use of psychological testing during STOLL exams. Any testimony related to  
5 "Paraphilias" or "Sadism" should not be allowed.

6 Respectfully Submitted,  
7  
8

9 DATED: November 28, 2023

LAW OFFICES OF IAN WALLACH, P.C.

10  
11 By:   
12 IAN M. WALLACH  
13 Attorney for Defendant  
14 PEDRO MARTINEZ  
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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 5777 West Century Blvd., Suite 750, Los Angeles, CA 90045

On November 19, 2023, I served the following document(s) described as: **DEFENDANT PEDRO MARTINEZ'S MOTION FOR CLARIFICATION** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Deputy District Attorney Deena Pribble  
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 November 29, 2023 at Los Angeles, California.



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IAN WALLACH