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SUPERIOR COURT
COUNTY OF SAN BERNARDINO
JOSHUA TREE DISTRICT

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BY *Nadine Golden*
NADINE GOLDEN, DEPUTY

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
11 280 S Beverly Dr, Ste. 209
12 Beverly Hills, CA 90212
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,

Case: FVI19000218

21 v.

22 Plaintiff,

23 PEDRO MARTINEZ,

24 Defendant.

**DEFENDANT PEDRO MARTINEZ'S
MOTION TO RECONSIDER
ADMISSION OF ABC NEWS SEGMENT
ON GROUNDS THAT INCLUDE
JUDICIAL BIAS, RESERVATION OF
RIGHTS RELATED TO JUDICIAL BIAS,
AND REQUEST FOR REVIEW AND
RECONSIDERATION OF PRIOR
COURT RULINGS ON GROUNDS OF
JUDICIAL BIAS**

25 **I. INTRODUCTION**

26 The defense has proffered a two and a half minute (approximately) video of an ABC
27 News segment featuring witness Magdalena Serna ("SERNA") about allegations concerning
28 complaining witness Ismael R. ("ISMAEL"). The segment features footage of SERNA's
home, photographs of ISMAEL's belongings, a statement by SERNA concerning her

1 purported 7-hour interview with ISMAEL, a statement by attorney Paul Matiasic as to his
2 theories of civil liability against Hesperia Unified School District wherein he recites the
3 allegations to which SERNA, and SERNA alone, has testified, and a narration by a journalist
4 reciting the allegations to which only SERNA has testified. The segment is relevant, highly
5 probative and should be admitted.

6 The Court’s preclusion of this evidence, coupled with its analysis and on-record inquiry
7 as to whether the defense would play the video, if admitted, during closing argument, in
8 addition to its prior rulings addressed below, suggests judicial bias and warrants
9 reconsideration.

10 **II. STATEMENT OF FACTS**

11 The People allege that ISMAEL disclosed to SERNA over a 7-hour period that
12 Defendant Pedro Martinez (“Mr. Martinez”) committed horrid acts of child molestation.

13 The People presented NO corroborating evidence that this ever happened. ISMAEL
14 denies having made any disclosure to SERNA. SERNA testified that the mother of ISMAEL,
15 Alba Rosa (“Ms. Rosa”), was present during the disclosure. Ms. Rosa has not appeared to
16 testify.

17 SERNA testified that she recorded portions of ISMAEL’s disclosure but lost the
18 recordings. The People have no evidence of the recordings.

19 SERNA testified that, during her 7-hour interview of ISMAEL, she created a list of
20 each of her questions and ISMAEL’s answers and provided those to law enforcement or Paul
21 Matiasic, the attorney in the civil action. The People have no evidence of these documents.

22 SERNA had *motives* to fabricate the alleged disclosure at the time in question:

- 23 • ISMAEL testified that during the time in question, SERNA was abusing him.
24 This is confirmed by DCFS records which the Court has precluded the
25 defense from addressing at trial.
 - 26 ○ SERNA had a motive to fabricate the alleged disclosure – to divert
27 and obscure her misconduct (the Court has previously precluded
28 evidence of SERNA’s subsequent arrest, criminal charges, and

1 diversion in the *criminal* action related to her abuse of ISMAEL,
2 determining it irrelevant because the facial allegations of the
3 complaint in the criminal matter post-dated the events at issue in this
4 matter).

5 ○ SERNA gave sworn testimony that she “wanted a stage” and that is
6 why she required Paul Matiasic to bring a news crew to her home as a
7 condition of Mr. Matiasic representing ISMAEL in the civil action.

- 8 ● SERNA denied abusing ISMAEL during the time in question. She admits
9 only to spanking. This is contrary to ISMAEL’s testimony (as well his related
10 DCFS records).
- 11 ● SERNA stated that the only reason she retained a *civil* litigator was to put
12 Mr. Martinez in jail, and that is her explanation of her sworn statement of
13 wanting “someone to pay.”
- 14 ● SERNA denied providing the details of the disclosure to the ABC journalist.
15 However, the journalist’s narrative of events mimics that of SERNA and only
16 SERNA.
- 17 ● SERNA stated that the only reason she, as opposed to ISMAEL’s mother,
18 appeared on the ABC segment, in which photographs of ISMAEL’s clothing
19 and belongings are featured, was to protect ISMAEL’s identity.
- 20 ● SERNA testified that she assisted Paul Matiasic in finding other potential
21 plaintiffs because she wanted a platform to expose the acts of Mr. Martinez
22 and to hold Hesperia Unified School District accountable.
- 23 ● SERNA testified that she wants compensation for damages ISMAEL caused
24 to her belongings which she attributes to molestation by Mr. Martinez. The
25 ABC news segment features Paul Matiasic setting out his legal theories for
26 compensation.

- 1 • Paul Matiasic’s recitations of facts on the ABC segment mirror SERNA’s
2 allegations. No one, but SERNA, has asserted that ISMAEL disclosed these
3 allegations.

4 The evidence of the ABC News Video is relevant to whether SERNA fabricated the
5 alleged disclosure of ISMAEL to divert attention from her own conduct, provide her the
6 “stage” she testified that she wanted, and/or to obtain compensation. The Video, and not
7 SERNA’s self-serving trial testimony, is critical evidence that must be evaluated by the jury.

8 Moreover, SERNA *denied* that she discussed on the video the impact of the event on
9 her personally. The video impeaches this testimony.

10 **III. ARGUMENT**

11 **A. The ABC News Segment is Relevant**

12 Evidence is relevant if it has any tendency in reason to prove or disprove any disputed
13 fact that is of consequence to the determination of the action. (Evid. Code, § 210.)

14 Under Evidence Code section 351, *all* relevant evidence is admissible unless
15 specifically excluded by statute. All that is required to satisfy the admissibility requirements of
16 Evidence Code section 351 is that the evidence “has any tendency in reason to prove or
17 disprove any disputed fact that is of consequence to the determination of the action. (Evid.
18 Code, § 210.)

19 The video has a tendency in reason to prove or disprove a disputed fact that is of
20 consequence – whether ISMAEL made the alleged disclosure to SERNA.

21 **B. The Court’s Refusal to Perform a 352 Analysis is Unjustified**

22 The Court has refused to perform an Evidence Code section 352 analysis, determining
23 that the ABC Video is not relevant. Rather, on the record, the Court asked defense counsel
24 whether, if the evidence was admitted, the defense would play the video during closing
25 argument. This suggests judicial bias. The defense is uncomfortably obligated to state its
26 objection to the exclusion of this evidence based on judicial bias to preserve the matter for
27 review under *People v. Pearson* (2013) 56 Cal.4th 393, 447 and Cal. R. Ct. Canon 3
28 (B)(2),(5), *et. seq.*

1 The People did not state how the video is prejudicial and the Court has not compelled
2 the People to do so. The People must put forward a reason that the proffered evidence would
3 result in undue prejudice for the Court to sustain the objection. In *Vorse v. Sarasy* (1997) 53
4 Cal.App.4th 998, 1008-1009, the court stated:

5 "Prejudice" as contemplated by section 352 is not so sweeping as to include
6 any evidence the opponent finds inconvenient. Evidence is not prejudicial, as that
7 term is used in a section 352 context, merely because it undermines the opponent's
8 position or shores up that of the proponent. The ability to do so is what
9 makes evidence relevant. The code speaks in terms of *undue* prejudice. Unless the
10 dangers of undue prejudice, confusion, or time consumption "substantially
11 outweigh" the probative value of relevant evidence, a section 352 objection
12 should fail." (*People v. Cudjo* (1993) 6 Cal. 4th 585, 609.) "The 'prejudice'
13 referred to in Evidence Code section 352 applies to evidence which uniquely
14 tends to evoke an emotional bias against the defendant as an individual and which
15 has very little effect on the issues. In applying section 352, 'prejudicial' is not
16 synonymous with 'damaging.'" [Citation.]" (*People v. Karis* (1988) 46 Cal. 3d
17 612, 638.)

18 The prejudice that section 352 " 'is designed to avoid is not the prejudice or
19 damage to a defense that naturally flows from relevant, highly probative evidence.'
20 [Citations.] 'Rather, the statute uses the word in its etymological sense of
21 'prejudging' a person or cause on the basis of extraneous factors.'" [Citation.]"
22 (*People v. Zapien* (1993) 4 Cal. 4th 929, 958.) In other words, evidence should be
23 excluded as unduly prejudicial when it inflames the emotions of the jury,
24 motivating them to use the information, not to logically evaluate the point upon
25 which it is relevant, but to reward or punish one side because of the jurors'
26 emotional reaction. In such a circumstance, the evidence is unduly prejudicial
27 because of the substantial likelihood the jury will use it for an illegitimate purpose.

28 The defense has shown that the news segment is relevant. The People have neither
offered, nor been compelled to offer, why its admission is prejudicial, which is required
to preclude its admission.

Thus far, the Court has excluded nearly all exculpatory evidence both discovered by
and presented by the defense. This pattern suggests judicial bias and certainly establishes the
appearance of judicial bias. The Court has precluded admission of evidence as follows (the
defense reserves its right to challenge each of the rulings below on the grounds of judicial bias
and requests at this time that the Court reconsider each one):

- 1 - The Court denied the defense motion to preclude use of the term “victim.”
- 2 - The Court denied admission of evidence substantiating that SERNA abused
- 3 ISMAEL both at the time at issue and in the months following (even though
- 4 SERNA was criminally charged with child abuse against ISMAEL and his
- 5 brother and entered into a diversion). During trial , ISMAEL referred to SERNA
- 6 as his “other abuser.”
- 7 - The Court has precluded evidence of SERNA’s prior acts of moral turpitude,
- 8 including a conviction for battery against an elder.
- 9 - The Court has limited how the defense refers to ISMAEL’s sworn testimony that
- 10 SERNA is an abuser, mandating the defense to pretend to that ISMAEL had
- 11 instead used the words “hitting” or “spanking” rather than “abused.”
- 12 - The Court has precluded the defense from introducing evidence of SERNA’s
- 13 research, education, and interest in pedophilia and sexual assault.
- 14 - The Court has precluded the defense from introducing evidence of ISMAEL’s
- 15 prior foster care and allegations by SERNA and Ms. Rosa against the foster
- 16 parents of child molestation.
- 17 - The Court has precluded the defense from introducing evidence of SERNA’s
- 18 prior allegations of sexual molestation involving her son, Luke.
- 19 - The Court has precluded the defense from introducing evidence of SERNA’s
- 20 many, and unsubstantiated accusations of molestation and sexual assault against
- 21 various men throughout her life.
- 22 - The Court has precluded the defense from introducing evidence of ISMAEL’s
- 23 prior sex acts, specifically touching other children and requesting to be touched
- 24 which predate the time period at issue. SERNA testified that that these acts (the
- 25 touching of ISMAEL’s little brother Maximo and the touching of Essence
- 26 Smith’s son, Micah) led her to believe an adult male was sexually abusing
- 27 ISMAEL. The Court has precluded the testimony of Essence Smith who
- 28 observed this behavior in Spring 2018, long before the time period at issue (it

1 should be noted that although the defense offered evidence that Essence Smith
2 called SERNA because Essence Smith was concerned that Ismael was sexually
3 abusing his brother, and even though SERNA testified that she understood these
4 concerns to mean that ISMAEL was sexually abusing his brother, the evidence
5 was not relevant because Essence Smith only saw ISMAEL “poking his
6 brother’s rear” with a pencil, and did not personally witness ISMAEL *inserting*
7 *the pencil into his brother’s anus*, it was not relevant).

- 8 - The Court has precluded the defense from introducing evidence of complaining
9 witness Xzavier M.’s (“XZAVIER’s”) prior abuse allegations against his mother
10 and her boyfriend. In fact, the same social worker, Dominquez, interviewed
11 XZAVIER in 2016 and 2019. XZAVIER alleged that this mother’s boyfriend
12 hit him in the penis and bit him on the butt. In addition to XZAVIER’s capacity
13 to conflate the abuse from 2016 with the 2019 allegations, this evidence is
14 directly relevant, per defense expert Bradley McAuliff to XZAVIER’s
15 heightened suggestibility.
- 16 - Although a Motion for Reconsideration is pending, the Court has precluded
17 impeachment using SERNA’s false testimony in the present action regarding
18 SERNA’s testimony in the related civil action, namely that she never testified
19 that she read articles and books and owned books on the subject of child
20 molestation from the age of 19 to present.
- 21 - The Court allowed the People to reopen its questioning of witness Melody Smith
22 after questioning had closed to save time from addressing the inquiries on
23 rebuttal, which presumes that Mr. Martinez would have put on a defense at all,
24 for if none was put on there would be no lawful means to reopen.

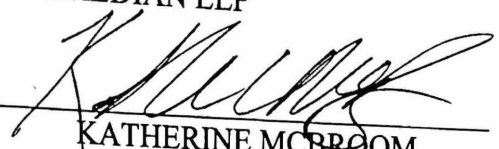
25 Coupled with this Court’s statement in open court expressing its concern that admission
26 of the ABC video would result in it being played by the defense in closing argument, it does
27 not appear there is any other ground warranting preclusion of the ABC video aside from
28 judicial bias.

1 **IV. CONCLUSION**

2 For the reasons set forth above, this Court should allow the defense to introduce the
3 ABC News Video. Additionally, the Court should reconsider each evidentiary ruling
4 referenced above to determine whether, on grounds of judicial bias, such evidence should be
5 admitted.

6 DATED: October 29, 2023

7 KAEDIAN LLP

8 By: 
9 KATHERINE MCBROOM
10 Attorney for Defendant
11 PEDRO MARTINEZ

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 October 30, 2023, I served the following document(s) described as: **DEFENDANT PEDRO MARTINEZ’S MOTION TO RECONSIDER ADMISSION OF ABC NEWS SEGMENT ON GROUNDS THAT INCLUDE JUDICIAL BIAS, RESERVATION OF RIGHTS RELATED TO JUDICIAL BIAS, AND REQUEST FOR REVIEW AND RECONSIDERATION OF PRIOR COURT RULINGS ON GROUNDS OF JUDICIAL BIAS** 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.

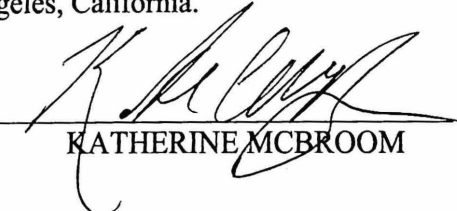
BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to California Rules of Court. The telephone number of the sending facsimile machine was (310) 893-3191. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.

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 October 30, 2023 at Los Angeles, California.


KATHERINE MCBROOM