

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

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

Attorneys for Defendant
PEDRO MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

v.

Plaintiff,

PEDRO MARTINEZ,

Defendant.

CASE: FVI19000218

NOTICE OF MOTION TO USE JURY
QUESTIONNAIRE

Date: May 16, 2023
Time: 8:30 a.m.
Dept.: V3

**TO THE COURT; JASON ANDERSON, DISTRICT ATTORNEY FOR THE
COUNTY OF SAN BERNADINO; DEEENA PRIBBLE, DEPUTY
DISTRICT ATTORNEY FOR THE COUNTY OF SAN BERNADINO; and/or
representatives:**


PLEASE TAKE NOTICE that on May 16, at 8:30 a.m., or as soon thereafter that
this motion may be heard, in Department V3 of the courthouse located at 14455
Civic Drive, Victorville, CA 92392, Defendant Pedro Martinez will move this
Court to adopt the Jury Questionnaire annexed to Defendant's Motion To Use Jury

1 Questionnaire (simultaneously-filed) to screen potential jurors in this matter. The
2 grounds for this motion shall be those set forth in the Memorandum of Law
3 incorporated into said motion, the Court file, all prior proceedings in this matter,
4 and any arguments made at the hearing.
5

6
7 Respectfully Submitted,

8
9 Dated: May 4, 2023

10 By: THE LAW OFFICE OF IAN WALLACH, PC

11 

12 Ian Wallach

13 Attorney for Pete Martinez
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Attorneys for Defendant
PEDRO MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 v.

14 Plaintiff,

15 PEDRO MARTINEZ,

16 Defendant.

CASE: FVI19000218

DEFENDANT'S MOTION TO USE JURY
QUESTIONNAIRE WITH
MEMORANDUM OF LAW

Date: May 16, 2023
Time: 8:30 a.m.
Dept.: V3

17
18
19
20
21 NOW COMES Defendant Pedro Martinez ("Mr. Martinez") by and through his
22 attorneys Ian Wallach of the Law Office of Ian Wallach, P.C. and Katherine McBroom of
23 Kaedian, LLP, and makes his motion to use the attached Juror Questionnaire in jury
24 selection pursuant to the following Memorandum of Law:
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF LAW

This Court is vested with significant discretion regarding the questioning of jurors. Specifically, this Court has the authority to exercise discretion as to “The procedures for deciding requests for excuse for hardship and challenges for cause.” (Cal. Rule Ct. 4.200(a)(4).) Such procedures are necessary to ensure that a defendant is afforded a constitutionally valid trial.

I.

ARGUMENT

A. All Parties Have The Right To A Trial Before A Fair And Impartial Jury. A Jury Questionnaire Is Essential To Ensuring Defendant Is Afforded Such A Trial

In *People v. Taylor* (1992) 5 Cal.App.4th 1299, 1312, the Court stated:

First, "the right to unbiased and unprejudiced jurors is an inseparable and inalienable part of the right to a trial by jury guaranteed by the constitution." (*Lombardi v. California St. Ry. Co.* (1899) 124 Cal. 311, 317 [57 P. 66], quoted in *People v. Galloway* (1927) 202 Cal. 81, 92 [259 P. 332].) And "in carrying out its duty to select a fair and impartial jury ..., the trial court is not only permitted but required by inquiry sufficient for the purpose to ascertain whether prospective jurors are, through the absence of bias or prejudice, capable of participating in their assigned function in such fashion as will provide the defendant the fair trial to which he is constitutionally entitled." (*People v. Fimbres* (1980) 104 Cal.App.3d 780, 788). Voir dire is critical to assure that the Sixth Amendment right to a fair and impartial jury will be honored. "Without an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." (*Rosales-Lopez v. United States* (1981) 451 U.S. 182, 188).

See also *In Re Hitchings* (1993) 6 Cal.4th 97, 110-111:

The proposed Jury Questionnaire is essential to secure a fair trial before a fair and impartial jury. The need for a Jury Questionnaire in this matter is readily apparent. A person accused of a child sex crime is generally abhorred by the jury pool. And someone accused of multiple acts is not only abhorred even more, but jurors may lose sight of their

1 constitutional obligation to apply the reasonable doubt standard out of fear of what could
2 happen if the standard was not met (believing that the accused might re-offend). As such,
3 a Jury Questionnaire is a very beneficial tool for weeding out jurors unwilling to comply
4 with the Court's instructions and the applicable standards.

5
6 Moreover, many of the members of the pool will have their own child sexual
7 trauma or have close friends or family members that have been impacted by the same.
8 While a typical limited minimal court questionnaire on sexual experiences is a start, it is
9 not enough to ensure a fair and impartial jury for a defendant charged with the multitude
10 of serious and heinous crimes at issue in this matter.

11 **B. Voir Dire Must Provide Reasonable Assurance that All Jurors Will Be Fair
12 and Impartial, and Free From Bias or Prejudice**

13 In *In re Boyette* (2013) 56 Cal.4th 866, 888-889, the Supreme Court (*quoting*
14 *Taylor, supra*) enumerated the necessity of a functional voir dire to provide a reasonable
15 assurance that the significant right to an impartial jury is protected:

16 The ability of a defendant, either personally, through counsel, or by the court,
17 to examine the prospective jurors during voir dire is thus significant in
18 protecting the defendant's right to an impartial jury. Of course, the efficacy
19 of voir dire is dependent on prospective jurors answering truthfully when
20 questioned. As the United States Supreme Court has stated, 'Voir dire
21 examination serves to protect [a criminal defendant's right to a fair trial] by
22 exposing possible biases, both known and unknown, on the part of potential
23 jurors. Demonstrated bias in the responses to questions on voir dire may
24 result in a juror's being excused for cause; hints of bias not sufficient to
25 warrant challenge for cause may assist parties in exercising their peremptory
26 challenges. The necessity of truthful answers by prospective jurors if this
27 process is to serve its purpose is obvious.'

28 A juror who conceals relevant facts or gives false answers during the voir
29 dire examination thus undermines the jury selection process and commits
30 misconduct.'" (*citations omitted in Boyette, but apparently citing to Wilson,*
31 *supra*, 44 Cal. 4th at 822-23 (*in turn citing Hitchings, supra*, 6 Cal. 4th at 110-
32 11).

Without truthful answers on voir dire, the unquestioned right to challenge a
33 prospective juror for cause is rendered nugatory. Just as a trial court's

1 improper restriction of voir dire can undermine a party's ability to determine
2 whether a prospective juror falls within one of the statutory categories
3 permitting a challenge for cause (*citations omitted in Boyette, but apparently*
4 *citing Hitchings, supra*, 6 Cal 4th. At 111), a prospective juror's false answers
5 on voir dire can also prevent the parties from intelligently exercising their
6 statutory right to challenge a prospective juror for cause.

7 Such false answers *or concealment* on voir dire also eviscerate a party's
8 statutory right to exercise a peremptory challenge and remove a prospective
9 juror the party believes cannot be fair and impartial. We have recognized that
10 'the peremptory challenge is a critical safeguard of the right to a fair trial
11 before an impartial jury.' (*citations omitted in Boyette but reiterated (without*
12 *citation) in In re Manriquez* (2018) 5 Cal.5th 785, 821) (*emphasis added*).
13 As explained by the Court of Appeal, '[j]uror concealment, regardless of
14 whether intentional, to questions bearing a substantial likelihood of
15 uncovering a strong potential of juror bias, undermines the peremptory
16 challenge process just as effectively as improper judicial restrictions upon
17 the exercise of voir dire by trial counsel seeking knowledge to intelligently
18 exercise peremptory challenges.' (*citations omitted in Boyette, but*
19 *apparently citing Hitchings, supra*, 6 Cal. 4th at 100 (in turn citing *People v.*
20 *Wright* (1990) 52 Cal.3d 367, 419; *People v. Bittaker* (1989) 48 Cal.3d 1046,
21 1083-1084). 'The denial of the right to reasonably exercise a peremptory
22 challenge, be it by either the trial court or a juror through concealing material
23 facts, is not a mere matter of procedure, but the deprivation of an absolute
24 and substantial right historically designed as one of the chief safeguards of a
25 defendant against an unlawful conviction.' ” (*In re Hitchings, supra*, 6
26 Cal.4th at 10–112, fn. omitted.) We have since cited *Hitchings* with
27 approval. (*In re Hamilton*, 20 Cal.4th at p. 295; *People v. Majors* (1998) 18
28 Cal.4th 385, 417).

A jury questionnaire is the best means to secure these significant right

C. Absent Full, Individual Jury Voir Dire, A Jury Questionnaire Is The Most Efficient And Safe Method For Discovering Potential Juror Bias

To be effective, questioning during voir dire must examine the root of each individual juror's bias, not merely gloss over, or accept without questioning, a potential juror's assurance that he or she can be "fair and impartial." And it must be done in a manner in which potential jurors feel comfortable to express their biases and experiences, at times moreso than they are capable of doing in front of others (and especially

1 strangers). A Jury Questionnaire provides jurors with a greater capacity for honesty,
2 candor, and completeness.

3 The Court's decisions in *Boyette*, and prior precedent and prodigy (*see*
4 *Manriquez, supra*, 5 Cal.5th at p. 782) make clear that it is error to impanel jurors with
5 experiences or beliefs that might influence their thinking about a central issue in the case
6 without first affording the lawyers the opportunity to examine the nature of the jurors'
7 experiences and beliefs during voir dire. The absence of doing so can result in reversible
8 error.

9 The use of the proposed Juror Questionnaire, coupled with court voir dire and
10 individual voir dire, and occasional group voir dire at sidebar or in chambers, provides a
11 potential juror several opportunities to expose his or her bias. Jurors should be both
12 encouraged and sufficiently comfortable to provide full and honest answers. .

13 WHEREFORE Counsel requests that the Court use the Juror Questionnaire,
14 attached hereto, during jury selection.
15

16
17 Respectfully Submitted,
18

19 Dated: May 4, 2023

20 By: THE LAW OFFICE OF IAN WALLACH, PC

21 

22 Ian Wallach

23 Attorney for Pete Martinez
24
25
26
27
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
5 Blvd. Suite 210, Beverly Hills, CA 90211.

6 On May 4, 2023, I served the following document(s) described as: **DEFENDANT'S
7 NOTICE AND MOTION TO USE JURY QUESTIONNAIRE WITH
8 MEMORANDUM OF LAW AND JURY QUESTIONNAIRE** in this action by placing
9 true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

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

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

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

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

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

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

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

26 
27 TRACY VENA
28