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Attorneys for Defendant
PEDRO MARTINEZ

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
JOSHUA TREE DISTRICT

SEP 26 2023

BY *Nadine Golden*
NADINE GOLDEN, DEPUTY

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

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

PEDRO MARTINEZ,

Defendant.

Case No.: FVI19000218

**DEFENDANT PEDRO MARTINEZ'S
MOTION FOR NEW JURY PANEL, ET
SEQ.**

**Joshua Tree Courthouse
Dept.: M2**

1 The People told the jury that they were the People's client. The Prosecutor further stated
2 (paraphrasing) that the defense sits next to Mr. Martinez because they represent Mr. Martinez
3 and I sit next to (you or the jury) because I represent you.

4 The defense objected and the Court overruled the objection. The defense later raised the
5 issue again and the People objected. The Court limited further discussion from the defense and
6 instead informed jury that the People represent the State of California, and the defense represents
7 Mr. Martinez. Rather than curing the error, the Court has compounded it.

8 This is not a small issue. This is a major error in a statement of law that warrants a new
9 panel. Mr. Martinez requests one.

10 First, the Supreme Court of California stated that "The People" *includes the defendant*.
11 In *People v. Eubanks*, 14 Cal. 4th 580, 589-90, the Court stated:

12 The nature of the impartiality required of the public prosecutor follows from the prosecutor's
13 role as representative of the People as a body, rather than as individuals. "The prosecutor
14 speaks not solely for the victim, or the police, or those who support them, but for all the
15 People. That body of 'The People' includes the defendant and his family and those who care
16 about him. It also includes the vast majority of citizens who know nothing about a particular
17 case, but who give over to the prosecutor the authority to seek a just result in their name."
18 (Corrigan, On Prosecutorial Ethics (1986) 13 Hastings Const. L.Q. 537, 538-539.)

19 Second, the Court did not clarify that the prosecutor is *not* the attorney for the Jury. This
20 Court only stated that the prosecutor represents the People of the State of California. Without
21 that further correction the Jury can still believe the prosecutor is their lawyer.

22 Third, while the defense is counsel to Mr. Martinez, the essential defense functions
23 include representing the Constitution of the United States of America and that of California and
24 the individual rights enshrined in these documents – rights shared by the defense and each
25 member of the jury, and their family and friends, to assure that each is protected by those
26 constitutional rights.

27 Fourth, the People's assertion that they are the attorney for the jury has impacted Mr.
28 Martinez's due process right to competent counsel. The defense now must consider that if the

1 defense makes an objection which is sustained, the jury could hold that against the defendant
2 now that they have been instructed that DDA Pribble is their attorney.

3 Fifth, the People's assertion that they are the attorney for the jury has impacted Mr.
4 Martinez's presumption of innocence, for there now exists a concern that the jury is aligned
5 against the defense and with their own counsel. The juror would also determine that witnesses
6 that the Government refers to as "their witness" (or "the Government's Witnesses" or any similar
7 assertion) are vouched for by the jury themselves, and they would be the jury's witnesses. For
8 example, the People intend to call Jody Ward, PhD, a CSAAS expert. The jury will be instructed
9 that this witness is "the People's witness" which now can be construed to be one provided by
10 the jury themselves. The jury can also perceive that the jury themselves are presenting child
11 witnesses to establish the offenses at issue. The defense must then not only confront a child
12 witness, but one for whom the jury how has additional sympathies and duties to protect.

13 Sixth, the People's message was clear – it was the defense was the advocate for Mr.
14 Martinez and the prosecutor was the advocate for the jury. This is legally incorrect and
15 constitutionally violative.

16 Finally, the People's assertion that they are the attorney for the jury has bolstered the
17 credibility of the People's arguments, improperly shifting the burden to the defense to overcome.
18 Accordingly, whether or not the Court grants this request for a new panel, the Mr. Martinez
19 requests that the Court order that the parties should shift tables from this point forward, or
20 alternate daily.

21 Considering the above, Mr. Martinez requests that all present jurors be dismissed, a new
22 panel be ordered, that, and that the Court orders that the parties switch tables daily for all future
23 proceedings.

24 DATED: September 26, 2023

LAW OFFICES OF IAN WALLACH, P.C.

26 By: 
27 _____

IAN WALLACH
Attorney for Defendant
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 8383 Wilshire Blvd. Suite 210, Beverly Hills, CA 90211.

On September 26, 2023, I served the following document(s) described as:
DEFENDANT PEDRO MARTINEZ'S MOTION FOR NEW JURY PANEL, ET SEQ. in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Deena Pribble
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 September 26, 2023 at Los Angeles, California.



TRACY VENA