

1 **JASON ANDERSON,**
District Attorney,
2 **Deena Pribble, SBN 295133**
3 Lead Deputy District Attorney,
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6 dpribble@sbcda.org
Attorneys for the People

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT

JUN 16 2023

BY *ANGELINA NEWTON*
ANGELINA NEWTON, DEPUTY

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

9 THE PEOPLE OF THE STATE OF
10 CALIFORNIA,

11 PLAINTIFF,

12 VS

13 PEDRO MARTINEZ,

14 DEFENDANT

Case Number: FVI19000218

**NOTICE OF MOTION AND PEOPLE'S
MOTION TO COMPEL DISCOVERY
(CAL. PENAL CODE 1054.3);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

DATE.: June 20, 2023

TIME: 0830

DEPT: V3


17
18 TO: THE HONORABLE COURT, THE DEFENDANT, AND HIS ATTORNEYS
19 OF RECORD IAN WALLACH AND KATHERINE MCBROOM

20 PLEASE TAKE NOTICE THAT on June 20,2023 at 8:30 a.m., in
21 Department V3, the People will move the court to compel the Defendant to
22 produce any reports or statements of "experts" he intends to call at trial as well
23 as to produce the results (including the "experts" notes, raw data or testing etc.)
24 of all physical or mental examinations which the defendant has already declared
25 he intends to call at trial
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This motion is based on this notice, the pleadings, files and records in this action, and the declaration filed in support of this motion, and on evidence that may be addressed at the hearing on the motion.

Dated: June 16, 2023



(Charles Tsui for
Deena Pribble Deena Pribble)
Lead Deputy District Attorney

Learn Python
(Python 3.6)

1 **1. Procedural History**

2 On April 4, 2023, defense counsel sent an email to the People
3 “demanding” under “Pursuant to § 2034.230”¹ an “exchange” of expert
4 information and identifying four(4) “experts” he intends to call. (See Exhibit A,
5 attached to the Declaration of Deputy District Attorney Deena Pribble.) The
6 email purports to give “offers of proof” for each “expert.” The offers are vague
7 and ambiguous at best, but at least one “expert” is identified as testing the
8 Defendant.

9 On May 28, 2023, the People emailed counsel a request for “Any and all
10 reports, interviews, data, notes and conclusions” of each of their “experts.”
11 Sadly, instead of acquiring the requested material, it appears counsel’s time
12 was used drafting a motion to compel discovery of material which is patently
13 not discoverable. (See People’s Opposition to Defendant’s renewed motion to
14 compel discovery). As of the date of the filing of this motion, the People have
15 not received the statutorily required discovery from the defendant and the
16 People are required to expend the resources bringing this motion.

17 **2. The Defendant is Required to Provide Discovery of Witnesses**
18 **he Intends to Call as a Witness**

19 The defense, despite its best efforts cannot conduct a trial by ambush:

20 “The purpose of section 1054 et seq. is to promote ascertainment of
21 truth by liberal discovery rules which allow parties to obtain information
22 in order to prepare their cases and reduce the chance of surprise at
23 trial. [Citation.] Reciprocal discovery is intended to protect the public
24 interest in a full and truthful disclosure of critical facts, to promote the
25 People's interest in preventing a last minute defense, and to reduce the
26 risk of judgments based on incomplete testimony. [Citation.]” (*People v.*
Jackson (1993) 15 Cal.App.4th 1197, 1201.)

27 _____
28 ¹ The People remain at a loss as to what an uncited code with “§ 2034.230” has
to do with a criminal case where discovery is solely governed by Penal Code
§1054 et. seq.

1 Penal Code section 1054.3, subdivision (a)(1), requires the defense to
2 disclose to the prosecution, among other matters, “[t]he names and addresses of
3 persons, other than the defendant, he or she intends to call as witnesses at trial,
4 together with any relevant written or recorded statements of those persons,
5 including any reports or statements of experts made in connection with the
6 case, and including the results of physical or mental examinations ... which the
7 defendant intends to offer in evidence at the trial.” “This provision includes the
8 raw results of standardized psychological and intelligence tests administered by
9 a defense expert upon which the expert intends to rely. (*Woods v. Superior Court*
10 (1994) 25 Cal.App.4th 178, 184-185.)” (*People v. Hajek & Vo* (2014) 58 Cal.4th
11 1144, 1233; see also *Hines v. Superior Court* (1993) 20 Cal.App.4th 1818, 1822-
12 1823; compare *People v. Smith* (2007) 40 Cal.4th 483, 507-511 [materials relied
13 upon by defense expert at trial required to be disclosed under Evid. Code,
14 §§, 721, subd. (a)(3), 771, subd. (a)].)

15
16 Particularly when an expert has not prepared a formal report, handwritten
17 notes and psychological tests administered to the defendant constitute a “report”
18 for purposes of the statute. (*People v. Hajek & Vo, supra*, 58 Cal.4th at p. 1233;
19 see also *People v. Lamb* (2006) 136 Cal.App.4th 575, 580 [defense experts notes
20 were discoverable, notwithstanding defense’s claim that the expert had not
21 prepared a written report based on those notes]; accord *People v. Hughes* (2020)
22 50 Cal.App.5th 257, 278-280 [same rules apply to experts called by prosecution
23 under Pen. Code, § 1054.1, subd. (f)]; but see *Sandefffer v. Superior Court* (1993)
24 18 Cal.App.4th 672, 679 [defense not required to turn over drafts and random
notes incorporated into expert’s final report provided in discovery].)

25 **3. Conclusion**


26 In a twist of laughable irony, the Defendant complains that the People
27 haven’t provided material that is not discoverable yet has failed to comply with
28 the Criminal Discovery Act and has failed to provide the discoverable material

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to the People. The People respectfully request that the court order the Defendant to provide the relevant raw notes, raw data, test scores etc. from any and all physical or mental evaluations of the Defendant that fall within the ambit of §1054.3.

Dated:

Respectfully Submitted,
JASON ANDERSON,
District Attorney,

By:  (Charles Tsui for
Deena Pribble *Deena Pribble*)
Lead Deputy District Attorney.

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9 dpribble@sbcda.org
10 Attorneys for the People

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

13 **THE PEOPLE OF THE STATE OF**
14 **CALIFORNIA,**
15 **Plaintiff,**

16 **-vs-**

17 **Pedro Martinez,**
18 **Defendant**

19 **CASE No. FVI19000218**
20 **DECLARATION OF LEAD DEPUTY**
21 **DISTRICT ATTORNEY DEENA M.**
22 **PRIBBLE**

23 The undersigned Deputy District Attorney of the County of San
24 Bernardino, State of California, pursuant to the provisions of California Penal
25 Code Section 1334 et seq. hereby reports and certifies as follows:

- 26 1. That there is now pending in the Superior Court the above entitled
27 criminal prosecution by the State of California against PEDRO
28 MARTINEZ, hereinafter referred to as Defendant, case number
FVI1900218.

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EXHIBIT A

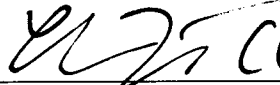
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- 2. It is known to me that Ian Wallach represents Defendant in case FVI1900218.
- 3. On April 24, 2023, Ian Wallach emailed the People an “exchange” of expert information and identifying four(4) “experts” he intends to call (See exhibit A).
- 4. On May 28, 2023, the People emailed counsel a request for “Any and all reports, interviews, data, notes and conclusions” of each of their “experts” that were identified in defense counsel’s April 24, 2023 email (See Exhibit B).
- 5. To date the People have not received the requested discovery.

I declare under penalty of perjury that the foregoing is true and correct. Dated this 16th day of June 2023 at Victorville, California.

Respectfully submitted,

Jason Anderson
District Attorney

By:  (Charles Tsui for Deena M. Pribble)
Deena M. Pribble
Lead Deputy District Attorney

Handwritten text, possibly a signature or date, located in the bottom left corner. The text is rotated and difficult to decipher, but appears to include the words "1952" and "10/10/52".

Tsuei, Charles

From: Pribble, Deena
Sent: Friday, June 16, 2023 11:12 AM
To: Tsuei, Charles
Subject: Exhibit A People motion to ompel

Importance: High

From: Ian Michael Wallach <iwallach@wallachlegal.com>
Sent: Tuesday, April 4, 2023 11:58 AM
To: Pribble, Deena <DPribble@sbcda.org>
Cc: McBroom Kacey <kmcbroom@kaedianllp.com>
Subject: People v. Pete Martinez, Case No. FVI19000218 (Sup. Ct. CA, Riverside Cry)
Importance: High

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,

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

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 forensic 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

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EXHIBIT B

Tsuei, Charles

From: Pribble, Deena
Sent: Sunday, May 28, 2023 10:16 AM
To: Ian Michael Wallach; Kacey McBroom
Subject: People v. Pedro Martinez
Attachments: 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



1 Office of the District Attorney
2 County of San Bernardino

3 **PROOF OF SERVICE BY PERSONAL SERVICE**

4 STATE OF CALIFORNIA)
5) ss.
6 COUNTY OF SAN BERNARDINO)

7 I, Charles Tsuei, declare as follows:

8 I am a citizen of the United States and employed in and by San Bernardino County, over
9 eighteen years of age and not a party to the within action; that my business address is 14455 Civic
10 Drive, Suite 300, Victorville, CA 92392.

11 On June 16, 2023, I served the within document(s): **NOTICE OF MOTION AND
12 PEOPLE'S MOTION TO COMPEL**, on the interested party:

13 (X) Emailing a copy to:

14 Ian Michael Wallach – iwallach@wallachlegal.com
15 Kacey McBroom – kmcbroom@kaedianllp.com

16 Dated: June 16, 2023
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Respectfully submitted,
JASON ANDERSON,
District Attorney,



CHARLES TSUEI,
Deputy District Attorney