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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 No: FVI19000218

21 v.

22 Plaintiff,

**DEFENDANT PEDRO MARTINEZ’
NOTICE OF MOTION AND MOTION TO
SUPPRESS EVIDENCE PURSUANT TO
PENAL CODE SECTION 1538.5;
DECLARATION OF KATHERINE C.
MCBROOM**

23 PEDRO MARTINEZ,

24 Defendant.

25 **TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT AND THE**
26 **DISTRICT ATTORNEY OF SAN BERNARDINO COUNTY AND/OR HIS**
27 **REPRESENTATIVES:**

28 PLEASE TAKE NOTICE that on September 14, 2023, at 8:30 a.m. or as soon thereafter
as the matter may be heard, in Department M2 of the above-entitled Court, Defendant Pedro

1 Martinez ("Mr. Martinez") will and hereby does move this Court for an order suppressing the
2 following items seized pursuant to a search warrant issued by Magistrate Camber on or about
3 January 23, 2019: All media collected from Mr. Martinez's cellular devices, including his
4 Iphone 5 and Iphone 7, including images, photos, videos, and URL data that fall outside the
5 scope of the search warrant.

6 The Search Warrant at issue is insufficient on its face pursuant to Penal Code section
7 1538.5(a)(1)(B)(i) and the property/evidence obtained, which the People seek to offer at trial, is
8 not that described in the warrant and thus must be excluded pursuant Penal Code section
9 1538.5(a)(1)(B)(ii).

10 This Motion is brought pursuant to Penal Code section 1538.5 and is based on this notice,
11 the attached memorandum of points and authorities, the declaration of attorney Katherine C.
12 McBroom, and upon such oral and documentary evidence as may be presented to the Court at
13 the time of the hearing.

14
15 Dated: September 13, 2023

KAEDIAN LLP &
LAW OFFICE OF IAN WALLACH

16
17 *Katherine McBroom*
18 IAN WALLACH
19 KATHERINE C. MCBROOM
20 Attorneys for Defendant
21 PEDRO MARTINEZ
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The People seek to introduce images and data seized from Defendant Pedro Martinez’ (“Mr. Martinez”) electronic devices that was seized outside of the search warrant and not identified in the search warrant affidavit. To date, the Court has not held an evidentiary hearing involving any testimony or evidence related to images, specifically cartoon images of pornography and images of bestiality and a news article or where and how they were seized by the People. The defense again requests such a hearing.

Up until on or about September 7, 2023, the People maintained that the images at issue were found on Mr. Martinez’ phone. As the Court is aware, the People have steadfastly denied any assertion that they were not contained on Mr. Martinez’ phone. And during the Preliminary Hearing that took place on March 5, 2020, Detective Arias gave sworn testimony that the images at issue were contained on Mr. Martinez’s phone.

On or about September 8, 2023 during hearings on *motions in limine*, the People disclosed that the items at issue were not found on Mr. Martinez’s phone. Instead, they were culled from recreations of URL links located on Mr. Martinez’ phone. The defense is not aware of what device Detective Arias used to search certain URL links that allegedly led this evidence.

It is now apparent that the items at issue — cartoon images of pornography and images of bestiality — were not contained on Mr. Martinez’ phone or any other device or otherwise identified in the search warrant affidavit that was incorporated into the warrant signed by Magistrate Michael Camber on January 23, 2019. Nor were they derived by any procedure authorized in said warrant. Mr. Martinez seeks to exclude this evidence.

1 II.

2 STATEMENT OF FACTS

3 On January 23, 2023, San Bernardino County Sheriff’s Department (“SBSD”) Deputy
4 Womelsdorf authored and submitted a request for a search warrant and supporting affidavit for
5 the search and seizure of Defendant Pedro Martinez’ (“Mr. Martinez”) person and residence to
6 including: “electronic storage devices, including cellular phones, laptop and desktop computers,
7 and hard drives.” (Declaration of Katherine C. McBroom [“McBroom Decl.”], ¶ 2, Exh. A,
8 Search Warrant and Affidavit.) The search warrant allows for a forensic technician to be granted
9 authorization to examine, make duplicate images/copies of the electronics seized.” The scope
10 of the search is limited. The warrant states:

11 Any photos, videos, or audio files depicting the sexual abuse or exploitation of
12 children. Diaries or other records of child sex partner(s) such as names of children,
13 types of sexual acts with children, and dates of sexual acts with children. Any
14 devices capable of electronic storage, including cellular telephones within access
and/or control of **David Winter**.

15 Magistrate Camber signed the search warrant on January 23, 2023.

16 Deputy Womelsdorf’s supporting affidavit is based largely on statements made by
17 reporting party Magdalena Serna (“Ms. Serna”). Deputy Womelsdorf stated under oath that Ms.
18 Serna noticed behavioral issues with complaining witness Ismael R., that Ismael was hesitant to
19 open up, and that Ismael eventually disclosed sexual abuse by Mr. Martinez. Deputy
20 Womelsdorf included the following details relayed by Ms. Serna (not by either complaining
21 witness):

- 22 - Mr. Martinez would place his penis in Ismael’s mouth and butt.
23 - Mr. Martinez referred to his penis as a taser and told Ismael that if he bit him during
24 the abuse that he would hurt him like in the scary movies.
25 - Mr. Martinez showed Ismael videos of young boys doing sex acts.
26 - Mr. Martinez showed Ismael videos of his school mate performing oral sex on Mr.
27 Martinez.
28 - Mr. Martinez threatened Ismael that Mr. Quarters would get him if he told anyone.

1 - Mr. Martinez used a color coding system when abusing children – with each color
2 having a different meaning.

3 Ismael, to date, has not said any such thing to law enforcement or social workers.

4 Mr. Martinez is currently engaged in trial. A jury has not yet been impaneled. The People
5 are seeking to introduce certain images and data recovered from Mr. Martinez’ Iphone 7 at trial.
6 Specifically, the People wish to introduce (1) an image from Mr. Martinez’ photo gallery (the
7 source of the image is unknown) of a screenshot of a news article related to the arrest of a female
8 teacher in Texas who was charged with having sex with a thirteen year-old boy and (2) images
9 and search history associated with certain URL sites which Mr. Martinez allegedly accessed
10 months before the relevant time period and did not save to his phone.

11 These images should be excluded from evidence at trial because (1) the search warrant is
12 insufficient on its face pursuant to Penal Code section 1538.5(a)(1)(B)(i) in that is authorizes
13 the search of devices belonging to someone other than Mr. Martinez and (2) the images and
14 search history the People seek to admit is not that described in the warrant pursuant to Penal
15 Code section 1538.5(a)(1)(B)(ii) and is not contained on the phone.

16 III.

17 ARGUMENT

18

19 **A. The Search Warrant Affidavit And Search Warrant Do Not Identify The Items At** 20 **Issue As Items To Be Searched Or Retained**

21 Penal Code Section 1525 provides as follows:

22 A search warrant cannot be issued but upon probable cause, supported by affidavit,
23 naming or describing the person to be searched or searched for, and particularly
24 describing the property, thing, or things and the place to be searched. A search
25 warrant cannot be issued but upon probable cause, supported by affidavit, naming
26 or describing the person to be searched or searched for, and particularly describing
27 the property, thing, or things and the place to be searched.

28 The search warrant affidavit here does not mention anything related to items not contained on
the phone at issue nor does it identify anything outside of devices accessed or controlled by
David Winter nor does it encompass any procedure or derivative evidence.

1 **B. The Evidence The People Seek To Introduce Was Discovered And Siezed Outside**
2 **Of The Scope Of The Warrant And In Violation Of The Constitutions Of The**
3 **United States Of America And That Of The State Of California**

4 The Search Warrant is attached as Exhibit A.

5 First, the search warrant affidavit is limited to devices accessible to or controlled by
6 David Winter, not Mr. Martinez. There is no evidence extracted or derived from any device
7 identified in the warrant or affidavit.

8 Second, the warrant provides that the phone can be searched for “evidence of the offenses
9 enumerated above [that were] **contained therein.**” The warrant continues to state that “only
10 those items recovered under the search warrant and relating to the offenses will be retained.”
11 But the People seek to introduce evidence obtained outside of the scope and by doing searches
12 — allegedly recreated on some device not yet disclosed to the Court or defense — that was not
13 “contained” on the phone recovered from Mr. Martinez.

14 **C. Evidence Obtained Outside Of The Scope Of The Warrant Cannot Be Admitted**

15 The Fourth Amendment was adopted as a bulwark against the reviled practices of issuing
16 general search warrants and writs of assistance. (*See Atwater v. Lago Vista* (2001) 532 U.S. 318,
17 339–340; *United States v. Verdugo-Urquidez* (1990) 494 U.S. 259, 266.) Accordingly,
18 a warrant that fails to “particularly” (U.S. Const., 4th Amend.) describe the evidence sought is
19 unconstitutional. (*Groh v. Ramirez* (2004) 540 U.S. 551, 557.)

20 Evidence unconstitutionally seized cannot be admitted in this action. In *In re Lance*
21 *W.* (1985) 37 Cal.3d 873, 883-884, the California Supreme Court provided an exhaustive
22 explanation of the breadth of California’s exclusionary rule in comparison to that of the United
23 States:

24 Although the United States Supreme Court has concluded that the deterrent
25 purpose of the exclusionary rule was adequately served through a limited
26 application to searches which invaded the defendant's personal right, a broader
27 application of the rule has been thought necessary in this state both to deter
28 unlawful police conduct and to preserve the integrity of the judicial process. Even
 before *Mapp* made the exclusionary rule mandatory in state courts, this court
 reasoned that exclusion of evidence obtained in violation of state and federal
 constitutional guarantees was a necessary, judicially declared, rule of evidence
 "because other remedies have completely failed to secure compliance with the
 constitutional provisions on the part of police officers with the attendant result that

1 the courts under the old rule have been constantly required to participate in, and
2 in effect condone, the lawless activities of law enforcement officers."
3 (*People v. Cahan* (1955) 44 Cal.2d 434, 445.) We noted in *Cahan* that because we
4 were adopting the exclusionary rule as a rule of evidence, we were not bound in
5 its application by decisions applying the federal rule (*id.*, at p. 450), and later in
6 the same year held that because the California exclusionary rule served a broader
7 purpose than the rule then applied in the federal courts it was "applicable whenever
8 evidence is obtained in violation of constitutional guarantees, . . . whether or not
9 it was obtained in violation of the particular defendant's constitutional rights."
10 (*People v. Martin* (1955) 45 Cal.2d 755, 761.)

11 In adopting this vicarious exclusionary rule in *Martin*, we explained again that
12 exclusion of unlawfully seized evidence was necessary both because other
13 remedies had been ineffective in deterring unlawful police conduct, and because
14 admission of the evidence involved the court in an implied condonation of that
15 conduct. "This result occurs whenever the government is allowed to profit by its
16 own wrong by basing a conviction on illegally obtained evidence, and if law
17 enforcement officers are allowed to evade the exclusionary rule by obtaining
18 evidence in violation of the rights of third parties, its deterrent effect is to that
19 extent nullified. Moreover, such a limitation virtually invites law enforcement
20 officers to violate the rights of third parties and to trade the escape of a criminal
21 whose rights are violated for the conviction of others by the use of the evidence
22 illegally obtained against them." (*Id.*, at p. 760.)

23 Thereafter, this judicially created rule of evidence was applied by this court to
24 evidence seized in violation of either the Fourth Amendment or article I, section
25 13 (formerly § 19) of the California Constitution. (See *Kaplan v. Superior Court*,
26 *supra*, 6 Cal.3d 150, 157; *People v. Brisendine*, *supra*, 13 Cal.3d 528, 549 ["Our
27 vicarious exclusionary rule has never been required under the Fourth Amendment
28 (*see Alderman v. United States* (1969) 394 U.S. 165, 171-176 but has been a
continuing feature of California law under our ability to impose higher standards
for searches and seizures than compelled by the federal Constitution"].)

29 In light of the above, the cartoon images of sexual conduct and images of bestiality as
30 well as the news article allegedly contained in the photo gallery -- obtained outside of the scope
31 of the warrant -- cannot be admitted at trial.

32 **IV.**
33 **CONCLUSION**

34 Based on the foregoing, Mr. Martinez respectfully requests an evidentiary hearing to
35 establish from where the People's proffered evidence was seized and discovered and whether

1 such evidence is within the scope of Magistrate Camber’s January 23, 2023 order. Should the
2 Court determine that said evidence is outside the scope of the search warrant, that evidence
3 should be precluded at trial.

4
5 Dated: September 13, 2023

6 *Katherine McBroom*
7 IAN M. WALLACH
8 KATHERINE C. MCBROOM
9 Attorneys for Defendant
10 PEDRO MARTINEZ
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DECLARATION

1 **DECLARATION OF KATHERINE C. MCBROOM**

2 I, Katherine C. McBroom, declare as follows:

3 1. I am an attorney duly admitted to practice law in the State of California and am an
4 attorney for Defendant Pedro Martinez (“Mr. Martinez”) in the above-entitled matter. I make
5 this declaration in support of Mr. Martinez’s Motion to Suppress Pursuant to Penal Code section
6 1538.5.

7 2. Attached here as Exhibit A is a true and correct copy of San Bernardino County
8 Sheriff’s Deputy Jonathan Womelsdorf’s (“Dep. Womelsdorf’s”) Search Warrant and Affidavit
9 dated January 23, 2019.

10 3. Mr. Martinez is currently engaged in trial; a jury has not yet been impaneled.

11 4. The People and the San Bernardino County Sheriff’s Department have represented
12 that certain images they seek to admit at trial were located on Mr. Martinez’ cellphone. Detective
13 Brian Arias (“Det. Arias”) testified at Preliminary Hearing that indeed these images were on the
14 cellular phone. At the time of the Preliminary Hearing, attorney Ian Wallach and I were not
15 counsel of record.

16 5. On or about September 7, 2023, during a hearing on *motions in limine* DDA Deena
17 Pribble represented that she wished to admit certain images obtained by Det. Arias based on cell
18 phone data collected in the forensic Cellebrite report. Defense argued that these images are
19 inadmissible because they are not located on Mr. Martinez’s phone and were not accessed during
20 the relevant time period.

21 6. On September 12, 2023, I requested additional time to consult with a forensic
22 cellphone analyst concerning the Cellebrite report and the process by which Det. Arias located
23 certain images DDA Pribble wishes to admit. The Court granted my request.

24 7. On September 13, 2023, based on the People’s disclosure that the items at issue
25 were not recovered from Mr. Martinez’ phone, I consulted with a forensic cellphone analyst.
26 Based on my consultation, I am informed of and believe the following:

27 a. The images at issue are not child pornography.

EXHIBIT A

STATE OF CALIFORNIA – COUNTY OF SAN BERNARDINO
SEARCH WARRANT AND AFFIDAVIT
(AFFIDAVIT)

Deputy Jonathan Womelsdorf, swears under oath that the facts expressed by him/her in this Search Warrant and Affidavit and in the attached and incorporated statement of probable cause are true and that based thereon he/she has probable cause to believe and does believe that the property and/or person described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.



(Signature of Affiant)

HOBBS SEALING REQUESTED: YES NO
 NIGHT SEARCH REQUESTED: YES NO

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER, OR PEACE OFFICER IN THE COUNTY OF SAN BERNARDINO: proof by affidavit having been made before me by Deputy Jonathan Womelsdorf, that there is probable cause to believe that the property and/or person described herein may be found at the locations set forth herein and is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x" (s) in that:

- _____ it was stolen or embezzled
 x it was used as the means of committing a felony
 _____ it is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery
 x it tends to show that a felony has been committed or that a particular person has committed a felony
 x it tends to show that sexual exploitation of a child, in violation of Section 311.3, or depiction of sexual conduct of a person under the age of 18 years, in violation of 311.11, has occurred or is occurring
 _____ there is a warrant for the person's arrest

YOU ARE THEREFORE COMMANDED TO SEARCH:

Primary Residence: 10223 Shangri-La Ave. Hesperia, Ca. 92345, County of San Bernardino

Secondary/Work address: 10616 Maple Ave., Hesperia, Ca. 92345, County of San Bernardino

The residence is located in the City of Hesperia.

The residence is described as a single story, single family residence located on the east side of Shangri-La Avenue. The residence has brown stucco with white trim, red composition tile roofing with white windows with grids. The front of the residence faces west and has a three-car garage facing west. The front door is red in color and faces west. The numbers 10223 are affixed over the garage and white in color.

The work office is described as an approximately 15' X 15' custodian closet located on the north side of Maple Elementary School. The school is located at 10616 Maple Avenue and is on the south west corner of Maple Avenue and Mauna Loa Street. The room has blue double doors and has an interior door that leads to an approximately 10' X 10' electrical room with roof access. The room is located on the north side of the quad/cafeteria area and is between two restrooms.

Person to be searched:

Pedro Martinez Date of birth 02/16/1973 CDL: A9667077

Martinez is a Hispanic Male adult 5'10" tall, approximately 200 lbs., with Black hair and Brown eyes.

Martinez resides at 10223 Shangri-La Avenue in Hesperia California.

The search is to include collection of DNA and Sexual Assault Kit of Martinez

To include: all persons present during service of the warrant, all rooms, attics, basements, cellars, safes, vaults, garages, storage rooms, storage units and devices, clothing, outbuildings, and all other parts therein and/or thereupon; surrounding grounds and subterranean burial areas; vehicles, campers, therein and/or thereupon; electronic storage devices, including cellular phones, laptop and desktop computers, and hard drives; and any place or thing not listed that could reasonable conceal or contain the following property and/or person.

FOR THE FOLLOWING PROPERTY/PERSON:

For the Following Property:

It is further requested that authorization to seize items for later search by electronic storage device experts be granted. It is further requested that a forensic technician, sworn or not sworn, be granted authorization to examine; make duplicate images/copies of the above mentioned electronic media and to determine if evidence of the offenses enumerated above are contained therein. Only those items recovered under the Search Warrant and relating to the offenses will be retained. The master copy will be retained in evidence storage for later discovery and trial purposes.

Peace Officers or assigned representatives are authorized, during the execution of this Search Warrant, to video tape, photograph, and/or take digital images of the scene and surrounding area(s), take measurements and make sketches of the scene and adjacent areas; and to seize suspected blood and other physiological fluids; hair and fibers; fingerprints, footprints, and other impressions left at the scene; any and all instruments used to aid and abet in the commission of the crime, clothing of the suspects(s) and/or victims(s); photos and film, developed and undeveloped; samples of other fluids and solids that may have stained or adhered to the clothing, bedding, and person of the victim(s) and/or suspect(s), or any other surface.

Any photos, videos, or audio files depicting the sexual abuse or exploitation of children. Diaries or other records of child sex partner(s) such as names of children, types of sexual acts with children, and dates of sexual acts with children. Any device capable of electronic storage, to include cellular telephones within access and/or control of David Winter.

Any items tending to establish the identity of persons who have dominion and control of the location.

Any information obtained through the execution of the warrant that is unrelated to the objective of this warrant shall be sealed and not subject to further review, use, or disclosure without a court order set forth in Section 1546.1(d)(2) of the Penal Code.

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and Incorporated Affidavit was sworn to as true and subscribed before me this 23 day of 1, 2019, at 11:30 AM / PM. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.



(Signature of Magistrate)



(Printed Name of Magistrate)

Judge of the Superior Court of California, County of San Bernardino
Authority to Record Scene/Evidence

The granting of this Search Warrant shall specifically authorize the officers to photograph and/or video tape the location being searched to preserve the image of the scene, the location of property, any and all items and/or vehicles at the location, and to identify any inhabitants or persons present or arriving at the property during the search. Investigative personnel, sworn or non-sworn are authorized to assist in the search in order identify, document and collect evidence, provided their participation is supervised by a sworn officer.

EXPERTISE OF AFFIANT

Your affiant (hereafter referred to as "I" or "me") Deputy Jonathan Womelsdorf, is a duly sworn Deputy Sheriff for the County of San Bernardino, State of California, and has been regularly employed in such capacity since January of 2010. During this time I completed the San Bernardino County Sheriff's Department Basic Academy and have worked in either a custodial, patrol or investigative capacity. I am currently assigned to the Hesperia Police Department as the CPS/APS Deputy.

Your affiant has attended the San Bernardino County Sheriff's Basic Academy, Advanced Officers Class, Basic Traffic Investigation, Advanced D.U.I. investigation, Pursuit Intervention Technique, Interview and Interrogation. Advanced gang awareness, Child abuse investigations.

During this time I have received training (specialized and In-Service), conducted and/or been involved in numerous investigations including identity theft, grand thefts, burglary, grand theft auto, narcotic investigation, possession of stolen property, assaults, robbery, Sexual assault, Child Abuse, evidence collection and scene preservation. Your Affiant has developed expertise in those areas.

Your Affiant in the past Eight years has been involved in numerous investigations and/or arrests of persons involved in crimes. It is your Affiant's experience, as a direct result of having investigated numerous, attempted homicides, robberies, assaults, rapes, burglaries, thefts, identity theft, sexual assaults, child abuse, and narcotic violation that suspects keep items of the crimes at their residence, in there vehicles at their friends and relatives residence, storage lockers and places of business, such as those being committed by the suspect(s). I have also experienced, and learned, that subjects who have conducted similar activity often possessed the fruits of the crime or evidence tending to show the location of the fruits of the crime. Therefore, it would be reasonable to believe that the property outlined in the "Statement of Probable Cause" would be located at the place to be searched. I believe the recovery of the requested property will corroborate other evidence collected to satisfy the corpus delicti of the alleged crime(s).

STATEMENT OF PROBABLE CAUSE

On 01/22/19, I received a courtesy report from Los Angeles Sheriff's Department reference a suspected child abuse that occurred at Maple Elementary School located in Hesperia reference report #019-00537-2999-418. The reporting party Magdalena Serna is a family friend to six-year-old male Victim. Serna noticed some behavioural concerns with the Victim and began asking if anyone had touched him inappropriately. Victim was hesitant to open up and eventually disclosed sexual abuse that had been occurring at Maple Elementary School by the custodian "Mr. Pete." Serna researched a staff roster for Maple Elementary School and located Pedro "Pete" Martinez who is the custodian at the school. The reporting Deputy did not have a photograph of Martinez to confirm if it was the same subject. "Mr. Pete" was later identified as Pedro Martinez DOB 02/16/73.

Victim told Serna, Martinez would take him into a small back room with blue double doors in the cafeteria during lunch hours. Martinez would place his penis in Victim's mouth. Victim told Serna Martinez put his penis inside of his butt. Martinez referred to his penis as his "toy" or his "Tazer." Martinez put his "Tazer" in Victim's mouth and told him if he bites he will hurt him like the scary movies. Martinez would show Victim scary videos he described as a video of young boys doing sexual acts. Martinez told the Victim "if you tell, I will do the same thing to you and I am watching from everywhere."

Martinez showed the Victim videos on his cell phone of a second Victim, and two other potential victims, performing oral copulation on Martinez. Martinez told Victim "they are learning too." At one point, Martinez grabbed Victim by the face and with a scary voice said "if you tell anyone, "Mr. Quarters" is going to get you." Victim explained a "code system" where green meant "Go," Purple meant "Slow Down," and black meant "Stop." The colours were so Victim would say a colour if Martinez was hurting him. Martinez would sit in a chair in the room and Victim would stand up when Martinez would put his penis in Victim's butt. Victim told Serna this has been happening since the beginning of the school year. The most recent occurrence was Friday, 01/18/2019.

A Sexual Assault exam was conducted on 01/21/19 for Victim by the Reporting Deputy at Whittier Hospital. The reporting Deputies were unable to get an initial disclosure from the Victim due to him being extremely shy. A Forensic interview is scheduled for the Victim.

On 01/22/19, at approximately 1130 hrs, Detectives and I responded to Maple Elementary School to interview the three juveniles mentioned by the Victim. Two of the juveniles did not disclose any abuse although one of the juveniles was reserved and apprehensive to talk to detectives.

I interviewed the second six-year-old male Victim along with Detective Laduke in the Principal's office of the school. The Victim was shy and nervous to speak with us and admitted to thinking he was in trouble. When I assured him he was not in trouble he began opening up. Victim began disclosing he was in the same room described by the first Victim with the custodian who he called "Mr. Pete." I later showed Victim a California driver's License Photograph of Pedro Martinez, date of birth 02/16/73 and he confirmed Martinez was "Mr. Pete."

Victim described two incidents where Martinez "snatched him" and pulled him into the room which he described as the "Blue room." The first incident was on an unknown day and time after Christmas break 2018.

The second incident was last week, and he recalled taking a spelling test on that day. The incident occurred before lunch when the Victim was walking back to class. Victim was shy and did not want to talk at first. I asked if he was afraid to talk to me because Martinez told him not to. Victim said "Yes" and said Martinez told him there would be consequences and he would hit him very hard if he told anyone what happened.

Victim went on to disclose Martinez touched Victim's privates with his hand then said, "now touch mine" referring to Martinez' penis. Victim disclosed Martinez put his penis in Victim's mouth. Victim told me Martinez put his penis in Victim's butt. Victim described a blue spinning chair in the room. Martinez was sitting on the chair and Victim was sitting on his lap. Both of their pants were off and Martinez put his penis in his Butt.

Victim knew what Martinez penis was and referred to it as his "Privacy." Victim described it as what he uses to go to the bathroom. Victim drew a picture of Martinez' penis on a piece of paper. Martinez showed him a video on his cell phone and described it as a video of grownups showing their privates.

I contacted Officer Mullinax from the Hesperia School Police and he confirmed Martinez is a custodian at Maple Elementary School and has been employed by the school district since 2005. I conducted a records check on Martinez and his driver's license address is 10223 Shangri-La Avenue in Hesperia. Officer Mullinax confirmed the same address on file for Martinez. Martinez has two vehicles registered to him at that address. A California Driver's license photograph was shown to the School's assistant principal and she confirmed Martinez is the custodian at the school.

NIGHT SERVICE:

Due to the totality of the investigation and the potential of Martinez finding out of our investigation into sexual abuse, Martinez may destroy electronic evidence and night service is requested. A search of the incident location at the school is to be searched as well. Once the electronic devices are collected, a separate search warrant will be completed to conduct forensic searches of the electronic devices. A sample of Martinez' DNA is to be collected.

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
Blvd. Suite 210, Beverly Hills, CA 90211.

5 On September 13, 2023, I served the following document(s) described as:
6 **DEFENDANT PEDRO MARTINEZ' NOTICE OF MOTION AND MOTION TO
7 SUPPRESS EVIDENCE PURSUANT TO PENAL CODE SECTION 1538.5;
8 DECLARATION OF KATHERINE C. MCBROOM** in this action by placing true copies
9 thereof enclosed in sealed envelopes and/or packages addressed as follows:

10 Deena M. Pribble
11 San Bernardino County District Attorney
12 E-mail: DPribble@sbcda.org

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

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

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

22 Executed on September 13, 2023 at Los Angeles, California.

23 *Tracy Vena*
24 _____
25 TRACY VENA