

FILED
Superior Court of California
County of Los Angeles

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David W. Staylor, Executive Officer/Clerk of Court
By: R. Saltd, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

11	PEOPLE OF THE STATE OF CALIFORNIA)	Case No.: BA487932
12	Petitioner,)	ORDER RE: MOTIONS IN LIMINE FOR SECOND JURY TRIAL
13	v.)	
14	DANIEL PETER MASTERSON,	
15	Defendant.	

The Court has read and considered both the People's and the Defendant Daniel Peter Masterson's (hereinafter "defendant") arguments, Trial Briefs, and Motions regarding potential evidence and witness testimony for the retrial in the above-captioned case. The Court has also read and considered the record from the first jury trial, the record from previous motions and the records and files in the above-captioned case.

PROCEDURAL HISTORY

On June 16, 2020, a complaint was filed against defendant charging him with three counts of forcible rape in violation of Penal Code Section 261(a)(2). These three (3) counts are alleged to have occurred between 2001 and 2003. These three charges have remained the same throughout the pendency of this matter. The following requested continuances and proceedings have taken place:

9/18/20 Arraignment and Plea continued

1 10/19/20 Arraignment and Plea continued at defense request; Demurrer Motion by
2 Defense denied;
3 11/2/20 Arraignment and Plea continued at defense request for additional
4 discovery;
5 1/6/21 Arraignment and Plea set, defense request to continue until March 2021
6 denied in Department 100; Arraignment and Plea set for 1/20/21;
7 1/20/21 Arraignment and Plea in Department 100; defendant pleads not guilty;
8 case assigned to Department 105 for all purposes;
9 3/24/21 Status Conference in Department 105; 4/20/21 set for contested discovery
10 hearing and 5/18/21 set for preliminary hearing;
11 4/20/21 Defense motions for Discovery, Trombetta Motion, Pitchess Motion,
12 Motion to Seal and Defense Motion to Continue the Preliminary Hearing heard, argued and
13 denied; Preliminary Hearing remains set for 5/18/21;
14 4/23/21 Additional defense motions re Pitchess and privileged police investigative
15 materials denied;
16 4/29/21 Second Defense Motion to Continue the Preliminary Hearing heard,
17 argued and denied; Preliminary Hearing remains set for 5/18/21;
18 5/18/21 Preliminary Hearing commences;
19 5/21/21 Preliminary Hearing concludes; defendant held to answer on all charges;
20 6/7/21 Arraignment and Plea on felony information; defendant pleads not guilty;
21 8/9/21 Status Conference and Motion to Dismiss (995 Motion)) set for 11/10/21
22 in Department 101; Motion to Quash Defense Subpoenas granted;
23 11/2/21 Counsel Holley and Cohen file written notice of appearance, a Motion to
24 Continue, and a Motion to Dismiss Pursuant to PC 995 ;
25 11/10/21 In Department 101 – Defense Motion to Continue 995 Motion granted;
26 995 Motion continued to 2/8/22; In Department 105 – with all counsel present, trial date is set
27 8/29/22 (0/10). All counsel agree to trial date.
28

1 2/8/22 In Department 101 – Defense 995 Motion heard, argued and denied by
2 Judge Coen; in Department 105 – status conference; Motion to Quash Defense Subpoenas heard,
3 argued and granted by the Court; jury trial date remains set for 8/29/22.

4 5/31/22 At defense request, oral Defense Motion to Continue Trial Date is granted
5 to October 11, 2021 (0/10). Defense Motions to Dismiss Count One for Delay and to Sever
6 Count Two are heard and argued. Motion to Sever Count Two is denied. Motion to Dismiss
7 Count One for Delay is continued.

8 6/30/22 In Camera hearing with all counsel to discuss trial date. The trial date
9 remains set for 10/11/22. In open court, defense Motion to Dismiss Count One for Delay
10 resumes and is heard, argued and denied.

11 7/26/22 Counsel sends letter to the Court requesting to continue the jury trial.

12 7/28/22 Counsel files a written declaration in support of her continuance.

13 8/12/22 Defense request to continue the jury trial is denied. The Court issues a
14 written order denying the continuance.

15 8/22/22 Third Party Lavelly and Singer object to People's subpoena duces tecum.

16 8/29/22 The People file a Motion for Conditional Examination.

17 9/12/22 The Defense files its Trial Brief and Motions in Limine.

18 9/14/22 Hearing and arguments regarding Third Party Motion to Quash and
19 People's Request for Conditional Examination. Court issues ruling.

20 10/3/22 Hearing and arguments regarding Trial Briefs and Motions in Limine.

21 10/4/22 Court issues ruling,

22 10/11/22 Defense makes oral Motion to Continue the Jury Trial. Request to
23 Continue is denied. Jury trial commences.

24 11/30/22 Court finds jury is deadlocked and mistrial is declared. 2nd jury trial set
25 for 3/27/23.

26 1/10/23 Court denies Defense Invitation to Exercise Discretion to Dismiss the
27 Case.

28

1 upon. People v. Knight, (1941) 44 Cal.App.2nd 887. Furthermore, while the right to cross
2 examination is a significant element in a criminal case which is implicit in the constitutional
3 right to cross examine, it remains within the trial court's discretion to conduct trial and to limit
4 cross examination to those matters which are properly relevant and admissible. People v.
5 Schwartzman, (1968) 266 Cal.App.2d 870.

7 **2. Evidence Code Section 210: Relevant Evidence:**

8 Relevant evidence is defined in CEC Section 210. The test of relevance is whether
9 evidence tends logically, naturally and by reasonable inference to establish material facts such as
10 identity, intent or motive. People v. Covarrubias, (2015) 236 Cal.App.4th 942; People v. Lee,
11 (2011) 51 Cal.4th 620; People v. Cowan, (2010) 50 Cal.4th 401. The trial court has considerable
12 discretion in determining the relevance of evidence. People v. Yang, (2021) 67 Cal.App.5th 1;
13 People v. Anderson, (2018) 5 Cal.5th 372.

14 In addition, a party may not cross examine a witness upon collateral matters for the
15 purpose of eliciting something to be contradicted, particularly where the matter the party seeks to
16 elicit would be inadmissible were it not for the fortuitous circumstances that the witness lied in
17 response to the party's questions. People v. Turner, (2017) 13 Cal.App.5th 397. A matter is
18 considered collateral if it has no logical bearing on any material disputed issue. People v.
19 Contreras, (2013) 58 Cal.4th 123.

20 COURT FINDING AND ORDER: For every admissibility determination made regarding the
21 admission of evidence, the Court is aware that it has discretion pursuant to Evidence Code
22 Section 210 to determine the relevance of proffered evidence. Whether stated on the record or
23 not, the Court has considered and found materially relevant such evidence that the Court finds is
24 admissible.

1 **3. Evidence Code Section 352: Probative Value v. Prejudicial Effect:**

2 The judicial determination of the admissibility of proffered evidence must include not only
3 the analysis of admissibility under the applicable statutory code and case law, but also is subject
4 to a balancing of the probative value of the proffered evidence against its prejudicial effect.

5 What qualifies as impermissible prejudice has been set forth in numerous cases. The
6 prejudice which the exclusion of unduly prejudicial evidence is designed to avoid is not the
7 prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.
8 People v. Holford, (2012) 202 Cal.App.4th 758. Similarly, the statute governing the discretion of
9 the court to exclude evidence that is unduly prejudicial is not designed to avoid damage from
10 relevant, highly probative evidence. Rather, prejudice that is to be avoided applies to evidence
11 that uniquely tends to evoke emotional bias against a party that has very little effect on the issues
12 at hand. Green v. County of Riverside, (2015) 238 Cal.App.4th 1363. However, exclusion of
13 evidence that produces only speculative inferences are more prejudicial than probative. People v.
14 Peoples, (2016) 62 Cal.4th 718.

15 Prejudice for CEC Section 352 purposes means evidence which uniquely tends to evoke an
16 emotional bias against the defendant as an individual and which has very little effect on the
17 issues or has little evidentiary value. People v. Jefferson, (2015) 238 Cal.App.4th 494. Prejudice
18 for purposes of CEC Section 352 does not mean damage to a party's case that flows from
19 relevant and probative evidence. Rather, it means the tendency of evidence to evoke an
20 emotional bias against a party because of extraneous factors unrelated to the issues. People v.
21 Young, (2019) 7 Cal.5th 905. The fact that probative evidence reflects negatively on a defendant
22 is not grounds for its exclusion on the grounds of prejudice. People v. Valdez, (2011) 201
23 Cal.App.4th 1429.

24 **COURT FINDING AND ORDER:** For every admissibility determination regarding the
25 admission of evidence, the Court is aware that it has discretion pursuant to Evidence Code
26 Section 352. Whether stated on the record or not, the Court has conducted such a balancing test
27 weighing the probative value of the proffered evidence against its prejudicial impact. If
28 admitted, the Court finds that the probative value outweighs its prejudicial impact.

1 **4. Discovery Notice Requirement:**

2 Penal Code Section 1054 et. seq. controls the criminal discovery process including the timing
3 of disclosure. Penal Code Section 1054.7 states that “[t]he disclosures required under this
4 chapter shall be made at least 30 days prior to trial, unless good cause is shown why a disclosure
5 should be denied, restricted or deferred.” *Penal Code Section 1054.7*. In People v. Walton, the
6 trial court did not abuse its discretion in permitting a witness to testify despite the fact that the
7 prosecutor did not disclose him as a witness at least 30 days prior to trial where the prosecutor
8 found out about the witness on the night before the trial. Once the prosecutor located the
9 witness, she promptly fulfilled her disclosure duty to defendant and defendant was provided the
10 witness’s statement as well as being afforded an opportunity to interview the witness. People v.
11 Walton, (1996) 42 Cal.App.4th 1004.

12 A defense counsel’s possession of the evidence prior to trial is adequate notice of the People’s
13 potential use of the evidence. Notice to capital murder defendant of the prosecutor’s intent to
14 present penalty phase evidence of an unadjudicated attempted sodomy was adequate even
15 without specific written pretrial notice. Defense counsel received general written notification as
16 well as more specific oral notification prior to trial as well as additional specific written
17 information including the police report during trial, prior to the guilty verdicts. People v.
18 Cunningham, (2001) 25 Cal.4th 926. Notice given to defendant sufficiently informed him that
19 any forcible or otherwise unlawful sex acts performed at the time of the unadjudicated sexual
20 assault would be introduced during the penalty phase of a capital murder prosecution although
21 notice only said that the prosecution would introduce evidence of “forcible rape.” People v.
22 Pride, (1992) 3 Cal.4th 195.

23 **5. Continuances:**

24 In his moving papers and during oral argument at the motion hearing, defendant asserts that
25 the admission of certain items of evidence would necessitate further trial preparation and a
26 continuance of the currently set trial date of April 11, 2023.

27 Both the People of the State of California and the defendant have a constitutional right to a
28 speedy trial. *State of California Constitution Article 1, Section 29*. This is especially true for

1 criminal jury trials. Criminal cases *shall* be set for trial, heard and determined as soon as
2 possible. *People v. Katzman*, (1968) 258 Cal.App.2d 81.

3 Penal Code Section 1050 requires a showing of good cause. Penal Code Section 1050(a)
4 regarding motions to continue sets forth in pertinent part:

5 The welfare of the people of the State of California requires that all proceedings in
6 criminal cases shall be set for trial and heard and determined at the earliest possible time.

7 . . . Excessive continuances contribute substantially to [court] congestion and cause
8 substantial hardship to victims and other witnesses. . . . It is therefore recognized that the

9 people, the defendant, and the victims and other witnesses have the right to an
10 expeditious disposition, and to that end it shall be the duty of all courts and judicial

11 officers and of all counsel, both for the prosecution and the defense, to expedite these
12 proceedings to the greatest degree that is consistent with the ends of justice.

13 *Penal Code Section 1050(a)(italics and emphasis added).*

14 Additionally, counsel seeking a continuance of any criminal matter must set forth good
15 cause for the continuance. *Penal Code Section 1050(e)*. "Neither the convenience of the parties
16 nor a stipulation of the parties is in and of itself good cause." *Penal Code Section 1050(e)*.

17 A court that is determining whether to grant a continuance in a criminal case considers
18 not only the benefit which the moving party anticipates but also the likelihood that such benefit
19 will result, the burden on the other witnesses, jurors, the court, and above all, whether substantial
20 justice will be accomplished or defeated by granting the continuance motion. People v.

21 Henderson, (2004) 115 Cal.App.4th 922. A continuance of a criminal trial may be granted only
22 for good cause and the trial court has broad discretion to determine whether good cause exists.

23 People v. Johnson, (2019) 32 Cal.App.5th 26.

24 Moreover, motions to continue criminal jury trials are disfavored and will be denied
25 unless the moving party presents affirmative proof in open court that the ends of justice are
26 served by the requested continuance. *California Rules of Court, Rule 4.113*.

27 COURT FINDING AND ORDER: The instant need for defense to continue would
28 constitute the 12th request to continue this matter. The criminal complaint was filed in June

1 2020. Over two (2) years have passed since the initial filing of the complaint. The charges have
2 remained the same over this period of time – to wit, three (3) counts of forcible rape. The first
3 trial ended with a hung jury on November 30, 2022. Months have passed since a mistrial in the
4 first trial was declared.

5 COURT FINDING AND ORDER: This case is not complex. The Court GRANTS the
6 request to continue. The Court continues the commencement of jury selection from April 11,
7 2023, to April 17, 2023. Assuming jury selection takes approximately a week, witness testimony
8 would likely start the week of April 24th. This provides defendant with well over a month from
9 the time that defendant was provided explicit written notice from the People regarding prior bad
10 act witness and the new expert witness. This meets the statutory time for notice set forth in
11 Penal Code Section 1054.7. Moreover, for more than a year, defense has been in possession of
12 the general testimony of the 1108 witness and the subject matter of the proffered expert
13 testimony regarding rape trauma syndrome and the impact of alcohol and drugs on memory.
14 Thus, the Court finds both that defendant had actual notice and time to prepare well before the
15 explicit written notice provided in early March 2023 by the People and that at the very least, the
16 People have complied with all of the statutory discovery and notice requirements. The Court
17 will not consider any further request to continue the jury trial for reasons that have already been
18 identified by the defense and considered by the Court. Jury selection will commence on April
19 17, 2023. Defendant has failed to establish good cause to continue the jury trial past this new
20 date. Defendant is ordered to appear for the commencement of the jury trial in the above
21 captioned case on April 17, 2023.

22 **Specific Motions In Limine:**

23 **1. Request for Additional Time for Attorney Voir Dire:**

24 Code of Civil Procedure Section 223 controls the legal process for both judicial and attorney
25 voir dire. “The scope of voir dire conducted by counsel shall be within the reasonable limits
26 prescribed by the trial judge in the judge’s discretion subject to this section.” *Code of Civil*
27 *Procedure Section 223(b)(1)*. While the trial judge may not impose inflexible time limits,
28 counsel may not use the voir dire process to engage in improper questioning of the prospective

1 jurors. *Code of Civil Procedure Section 223 (b)(1) and (2)*. "An 'improper question' is any
2 question that, as its dominant purpose, attempts to precondition the prospective jurors to a
3 particular result or indoctrinate the jury." *Code of Civil Procedure Section 223(b)(3)*.

4 COURT FINDING AND ORDER: The Court GRANTS additional time for counsel to
5 question the prospective jurors as discussed in court with the parties. Counsel may also ask for
6 additional time if necessary, subject to the Court's discretion, or submit additional questions to
7 the Court for further inquiry. The Court will entertain these requests so long as the attorney-
8 conducted voir dire does not include improper questioning of the prospective jurors for the
9 purpose of preconditioning and/or indoctrinating the prospective jurors.

10 **2. The Admissibility of Evidence Regarding Scientology:**

11 The Constitutional Right to Freedom of Religion set forth in the First Amendment of the
12 United States Constitution does not *per se* bar the presentation of religious tenets and practices
13 when relevant and admissible in criminal prosecutions. Defense fails to cite any caselaw that
14 stands for this overly broad proposition. Rather, in criminal cases, courts have repeatedly
15 allowed for the presentation into evidence, those religious beliefs and practices that are highly
16 probative on the issues that are before the jury.

17 **A. Standing**

18 Any First Amendment claim of Freedom of Religion more appropriately lies with the
19 Scientology organization rather than any individual being criminally prosecuted for criminal
20 conduct. The admission of Scientology evidence in the criminal prosecution of defendant as
21 proffered here in no way interferes with the defendant's practice of Scientology or any particular
22 set of beliefs. In general, a criminal defendant lacks standing to claim a constitutional violation
23 on behalf of a third party. Constitutional rights are personal and may not be asserted vicariously.
24 United States v. Mattison, (1970) 437 F.2d 84, 85; Alderman v. United States, (1968) 394 U.S.
25 165; Broadrick v. Oklahoma, (1973) 413 U.S. 601. Defendant Masterson does not have standing
26 to raise a general claim of a First Amendment violation on behalf of the Scientology
27 organization.
28

1 Evidence Code Section 789 sets forth that evidence of a *witness's* religious belief or lack
2 there of is inadmissible to attack or support the credibility of that witness. *Evidence Code*
3 *Section 789*. As set forth above, defendant does not have standing to raise an objection under
4 this Evidence Code Section on behalf of any witness other than himself. Defendant did not
5 testify at the first trial and thus, was not a witness. Accordingly, unless defendant testifies at
6 trial, he has no standing to raise an objection to the proffered evidence under this Code Section.

7 **B. Admission of Scientology Evidence**

8 *Assuming arguendo* defendant has standing to raise a claim under the First Amendment,
9 the admission of Scientology evidence in the case at hand does not violate defendant's First
10 Amendment right, the Ecclesiastical Doctrine or Evidence Code Section 789. The First
11 Amendment embraces two concepts: the freedom to believe and the freedom to act. The
12 freedom to believe is absolute. The freedom to act is not. Conduct remains subject to regulation
13 for the protection of society. Roman Catholic Archbishop of Los Angeles v. Superior Court,
14 (2005) 131 Cal.App.4th 417 (citing Cantwell v. Connecticut, 310 U.S. 296, 303 – 04). Similarly,
15 the Ecclesiastical Abstention Doctrine does not apply to criminal cases. This doctrine grew out
16 of the so-called church property cases. Those cases involved internal church disputes whose
17 resolution depended upon the interpretations of religious doctrine. The court in Roman Catholic
18 Archbishop of Los Angeles, specifically declined to extend the Ecclesiastical Abstention
19 Doctrine to criminal cases holding “[t]he case here, at its core, is not an internal church dispute.
20 It is a criminal investigation into suspected child molestation allegedly committed by Priests.
21 This case does not involve internal church dispute over religious authority or dogma.” Id.

22 The First Amendment does not render religious practices immune from criminal
23 prosecution where such practices are in violation of state law. In Walker v. Superior Court, there
24 was no legislative intent to exempt prayer treatment, as a matter of law, from the reach of the
25 manslaughter statute. Providing prayer alone to a seriously injured child may constitute criminal
26 negligence sufficient to convict defendant of involuntary manslaughter. This is *not* protected by
27 the First Amendment freedom of religion clause or the California Constitution. Walker v.
28 Superior Court, (1988) 47 Cal.3d 112.

1 In People v. Cooks, (1983) 141 Cal.App.3d 224, defendant, a Muslim, was charged with
2 a wide range of violent crimes including murders and kidnappings spanning an extended period
3 of time. A co-defendant testified against the defendant. Recovered during the search of
4 defendant's residence was a binder of religious Nation of Islam teachings. The co-defendant
5 accomplice testified that defendant held religious meetings at his apartment, read aloud from the
6 binder and that the materials read advocated the killing of Caucasian people who were portrayed
7 as "white devils with blue eyes." As part of his defense, defendant asserted that he did not hold
8 meetings at his apartment and that he did not read from the binder. Defendant argued that the
9 admission of the binder in effect, put the Nation of Islam on trial. Over defense objection, the
10 trial court allowed the admission of the religious binder into evidence and allowed questioning
11 about the materials contained within the binder. On appeal, the defense claimed that the
12 admission of the binder and the consideration of the religious materials contained therein,
13 violated his First Amendment. In upholding the trial court's ruling, the Cooks court noted that
14 "First Amendment rights are not absolutes; the protected conduct begins with the expression of
15 opinion but stops with the perpetration of violence; free discussion must die upon the battlefields
16 of force." Article I, section 4, of the California Constitution expressly provides that the free
17 exercise and enjoyment of religion does not excuse acts that are inconsistent with the 'peace and
18 safety of the State.'" Cooks, 141 Cal.App.3d at pg. 326.

19 In the Cooks case, "the binder was not used to prosecute [defendant] for his religious or
20 social-political views. The contents of [defendant's] binder were relevant to show his motive for
21 the alleged murders and conspiracy to commit murder. The evidence was also relevant to
22 corroborate [the accomplice co-defendant's] testimony about meetings where [defendant] read
23 from the binder and discussed the killing of white people. Accordingly, there was no violation of
24 the defendant's First Amendment rights." Cooks at pgs. 141 Cal.App.3d at 326 - 327.

25 The Cooks court also rejected defendant's argument that the admission of the binder and
26 subsequent questions violated Evidence Code Section 789. The court held "[t]he binder,
27 however, was not admitted for the purpose of attacking [defendant's] credibility because of his
28

1 religious views. As previously explained, the binder was relevant evidence on the issue of
2 whether [defendant] had committed the alleged crimes.” *Id.* at pg. 326.

3 In People v. Bautista, (2008) 163 Cal.App.4th 762, the issue of the admission of religious
4 beliefs and practices in criminal prosecutions was directly addressed. In this case, the defendant
5 was the self-professed religious leader of a Pentecostal congregation. Defendant was charged
6 and later convicted of multiple counts of child molestation. At trial, the trial court allowed the
7 admission of background information of the church and the religious tenets of its members. On
8 appeal, defendant argued that the admission of this testimony including evidence of his religious
9 beliefs violated both his First Amendment right to the free exercise of religion and Evidence
10 Code Section 789.

11 The Bautista court disagreed with defendant explaining “the constitution does not erect a
12 *per se* barrier to the admission of evidence concerning one’s beliefs and associations simply
13 because those beliefs and associations are protected by the First Amendment. If the evidence is
14 relevant to the issues being tried, its use does not violate the First Amendment.” *Id.* The Bautista
15 court further held “tenets of defendant’s church including the defendant’s religious authority and
16 congregation’s concern with the appropriate behavior of teenage churchgoers provided an
17 important context for the charged incidents. The testimony regarding the churchgoers’ beliefs
18 was relevant to understanding the meetings with the defendant, defendant’s actions, the girls’
19 initial acceptance of defendant’s behavior and the families’ subsequent reactions.” *Id.*

20 Finally, the Bautista court concluded similarly that there was no violation of Evidence
21 Code Section 789. The court explained that testimony regarding the church’s belief and
22 defendant’s role in the church was not admitted for the purpose of attacking the defendant’s
23 credibility on the basis of his religious beliefs. As explained, the religious background provided
24 a context for the defendant’s actions and the girls’ delayed reporting of the incidents. The
25 church’s teachings thus, were relevant to determining whether defendant committed the alleged
26 crimes and the admission of this evidence did not violation Evidence Code Section 789. *Id.*

27 Scientology practices and beliefs have been specifically admitted in criminal cases where
28 relevant to issues before the trier of fact. In People v. Thompson, a defendant charged with

1 murder tried to suppress his confession that he made to a co-worker. The co-worker was a
2 practicing Scientologist and had told the defendant that he had reached a higher level of
3 understanding, referred to in the Scientology organization as "operating thetan." The defendant
4 asserted that his co-worker told him he was a minister and that anything the defendant said to the
5 co-worker would go no further. The defendant further stated that the co-worker held himself out
6 as an ethics officer but that he was not an auditor. People v. Thompson, (1982) 113 Cal.App.3rd
7 419. In finding that there was no clergy-penitent privilege protecting defendant's confession to
8 murder, the trial court examined numerous Scientology practices including the role of an auditor
9 and the use of an E-meter machine as opposed to the role of an ethics officer. The trial court's
10 scrutiny into the roles, policies and practices of Scientology was properly admitted and testified
11 to in open court and the court ruled accordingly. Id.

12 **C. The Issue of Delayed Reporting of Sex Crimes Is Before the Jury**

13 While defendant claims that he does not intend to challenge the victims' credibility on the
14 basis of delayed reporting, there is no question that defendant will be challenging the victims'
15 credibility on every aspect of the charged crimes. Indeed, defendant argues that the charged
16 incidents never occurred and that the victims are lying. Evidence regarding the delayed
17 reporting of sex crimes is relevant and admissible not only to explain the delay but is also
18 relevant and admissible on the evaluation of the sexual assault itself.

19 In People v. Brown, the victim of an alleged sexual offense did not make a prompt complaint
20 but instead disclosed the incident sometime later. Evidence of the fact and circumstances
21 surrounding the delayed complaint were relevant not only to understand the delay in reporting
22 the incident, but also was relevant to the jury's evaluation of the likelihood the offense did or did
23 not occur. People v. Brown, (1994) 8 Cal.4th 746.

24 Likewise in Jennifer K. v. Shank K., the court held that while the absence of a prompt
25 complaint is not a reliable indicator that an alleged sexual assault did not occur, circumstances
26 surrounding a delayed complaint may be relevant in evaluating the likelihood that the assault
27 occurred. (2020) 47 Cal.App.5th 558.
28

1 **COURT FINDING AND ORDER:** The Court ADMITS Scientology evidence in the
2 case at hand. Defendant lacks standing to raise a First Amendment claim on behalf of
3 Scientology. Additionally, the admission of Scientology practices and beliefs in no way
4 interferes with defendant's own beliefs and practices related to Scientology. *Assuming arguendo*
5 defendant has standing to raise this claim, the Court finds that the admission of Scientology
6 evidence does not violate defendant's First Amendment right, the Ecclesiastical Doctrine or
7 Evidence Code Section 789.

8 The admission of Scientology evidence in the above-captioned case provides an important
9 context for the victims' delayed reporting of the crimes which itself bears on the evaluation of
10 the witnesses' credibility and the actual occurrence of the crimes. In addition, Scientology
11 practices and beliefs are relevant to understanding the meetings and relationships that the victims
12 had with defendant; defendant's actions towards the victims; the victims' actions before, during
13 and after the charged crimes; the victims' initial acceptance of defendant's behavior and the
14 families' subsequent reactions. Thus, Scientology practices and beliefs are relevant to
15 determining whether defendant committed the alleged crimes.

16 Scientology evidence (including the definitions and explanations of Scientology terms and
17 positions within the organization) is admissible for the following purposes:

- 18 a. To explain the victims' delay in reporting the charged crimes including reports
19 made to individuals within the Scientology organization and their response to
20 those claims including any correspondence and/or documents;
 - 21 b. To explain the victims' belief that Scientology prohibits them from reporting
22 crimes committed by other Scientologists in good standing to outside (non-
23 Scientologists) law enforcement. This includes the belief that Scientologists hold
24 disdain for outside law enforcement and the secular court systems;
 - 25 c. To explain the victims' fear of retaliation, fear of being declared a suppressive
26 person and fear of harassment experienced after reporting the charged crimes to
27 outside law enforcement;
- 28

- 1 d. To explain the victims' actions before, during and after the charged incidents and
2 relevant to the charged incidents;
- 3 e. To explain all witness' (prosecution and defense) ties to the Scientology
4 organization, past and present, in order to understand the nature and context of the
5 relationships between the individuals testifying before the jury;
- 6 f. To explain the discrepancy between Jen B.'s first statement as written under the
7 direction of and supervision by Scientology officials and Jen B.'s later statements
8 made free from any direct and immediate Scientology influence; and
- 9 g. Expert testimony regarding Scientology relevant to the above listed categories and
10 as further set forth later in this Order.

11 This evidence is still subject to Evidence Code Section 352 as will be determined and ruled
12 upon by the Court during the presentation of the evidence at trial.

13 **3. Testimony that Complainants Felt Drugged:**

14 Evidence Code Section 780 sets forth those subject matters which directly impact the
15 evaluation of a witness's testimony. Section 780 states in part, "Except as otherwise provided by
16 statute, the court or jury may consider in determining the credibility of a witness any matter that
17 has a tendency in reason to prove or disprove the truthfulness of his testimony at the hearing,
18 including but not limited to the following: . . . (c) The extent of his capacity to perceive, to
19 recollect, or to communicate any matter about which he testifies. (d) The extent of his
20 opportunity to perceive any matter about which he testifies." *Evidence Code Section 780.*

21 Furthermore, the level of intoxication from alcohol or drugs is directly relevant to the charge
22 of forcible rape. To prove that defendant committed forcible rape requires evidence that 1)
23 defendant had sexual intercourse with a woman; 2) he and the woman were not married; 3) the
24 woman did not consent; and 4) defendant accomplished intercourse by force, violence, duress,
25 menace or fear of immediate and unlawful bodily injury. People v. Woods, (2015) 241
26 Cal.App.4th 461. No specialized legal meaning is intended for the term "force" as used in rape
27 statutes. People v. Dearborne, (2019) 34 Cal.App.5th 250. Force was sufficient for forcible rape
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1 where defendant used his entire body to pin down the victim in a cramped area in the back seat
2 of a car and defendant pressed what victim thought was a gun into her side. Id.

3 Force for purposes of aggravated sexual assault includes circumstances where the victim did
4 not want to engage in the act and the evidence does not otherwise establish the victim's positive
5 cooperation in act or attitude. It also includes the force used to accomplish penetration and the
6 physical movement and positioning of the victim's body in accomplishing the act. People v.
7 Thomas, (2017) 15 Cal.App.5th 1063. Moreover, an express or implied threat of harm,
8 constituting the "menace" element of aggravated sexual assault, does not require the use of a
9 deadly weapon or an express verbal threat to do additional harm. Threats can be exhibited in a
10 myriad number of ways, verbally and by conduct. Id.

11 The legislature did not intend the term "force" as used in forcible rape to be given any
12 specialized legal definition and in order to establish such force, the prosecution need only show
13 that the defendant used physical force of a degree sufficient to support a finding that the sexual
14 intercourse was against the will of the victim. While the force inherent in the act of penetration
15 is not sufficient by itself to prove forcible rape, pulling the victim back after she pulls away is
16 sufficient force for forcible rape. People v. Brown, (2017) 11 Cal.App.5th 332.

17 The question for a jury considering the charge of forcible rape is whether the defendant used
18 force to accomplish intercourse with the victim against her will or whether the force he used
19 overcame her physical strength or ability to resist him. People v. Lee, (2011) 51 Cal.4th 620.
20 Intent to commit rape is the intent to commit the act against the will of the complainant. A
21 defendant's specific intent to commit a crime may be inferred from all the facts and
22 circumstances disclosed by the evidence. People v. Guerra, (2006) 37 Cal.4th 1067.

23 Under the forcible rape statute, the degree of force utilized is immaterial. The People need
24 only show that the defendant used physical force of a degree sufficient to support a finding that
25 the act of sexual intercourse was against the will of the victim. People v. Mejia, (2007) 155
26 Cal.App,4th 86. Furthermore, evidence that the victim made clear to the defendant, repeatedly
27 and prior to penetration, that she did not wish to be penetrated and that defendant's efforts to
28 penetrate her were against her will and physically painful, and the defendant nonetheless forced

1 his penis into her vagina was sufficient to establish "force" for forcible rape. In re Jose P.,
2 (2005) 131 Cal.App.4th 110. This was so despite the fact that the victim voluntarily and actively
3 engaged in sexual foreplay with the defendant and continued to do so after he twice attempted
4 penetration and was rebuffed. Id.

5 To determine if the force element has been met, the trier of fact must look at the circumstances
6 of the case including verbal and nonverbal threats or the kind of force that might reasonably
7 induce fear in the mind of the victim. People v. Griffin, (2004) 33 Cal.4th 1015. A defendant's
8 actions of pinning the victim's arms to the floor as he penetrated her vagina with his penis while
9 she did not consent to the act of intercourse was sufficient evidence to establish that defendant
10 used force to accomplish intercourse against the victim's will. Id. Moreover, the fear necessary
11 for the offense of rape may be inferred from the circumstances despite even superficially
12 contrary testimony of the victim. People v. Iniguez, (1994) 7 Cal.4th 847.

13 Unanimity regarding the particular act of forcible rape is not required. Defendant was not
14 entitled to an instruction that jury could convict him only if it unanimously agreed that he
15 committed a particular act or rape, even though the victim testified that the defendant had raped
16 her on 2 separate occasions. People v. Champion, (1995) 9 Cal.4th 879. In Champion, the
17 defendant had raped the victim in her bathroom, left and then returned shortly thereafter to rape
18 her again. Defendant offered no evidence to show that he might have committed one of the rapes
19 but not the other. Thus, he was not entitled to an unanimity jury instruction. Id. In addition,
20 failure to give an unanimity instruction sua sponte with respect to the charge of forcible rape was
21 not error where it was not reasonably possible that jurors would otherwise disagree as to which
22 act defendant committed and yet convict him of the crime charged because the second vaginal
23 penetration testified to involved the same victim and occurred at the same place as and within
24 minutes of the first penetration. People v. Gonzales, (1983) 141 Cal.App.3rd 786.

25 COURT FINDING AND ORDER: The Court ADMITS testimony regarding how the
26 victims, charged and uncharged, felt after drinking a beverage provided by defendant. First,
27 whether or not the complainants were intoxicated or drugged is directly relevant to their ability
28 to perceive the events of the charged incidents and to communicate regarding the facts of the

1 charged incidents. This is especially true in light of the fact that defendant has vigorously cross
2 examined the complainants about their ability to perceive the incidents and their ability or
3 inability to repeatedly recount the detailed facts of those incidents after the occurrence of the
4 incidents. Second, being intoxicated and the circumstances surrounding the intoxication during
5 the incidents are directly relevant to how the sexual intercourse occurred and if it was completed
6 forcefully and against the victims' will. In other words, it is inextricably intertwined with the
7 commission of the sexual intercourse and is a circumstance relevant to the use of force to
8 complete the act and overcome the victims' will and lack of consent. The fact of intoxication by
9 either alcohol or drugs does not negate or supersede the use of force, if present, during the
10 commission of the charged incidents. The ingestion of alcohol and/or drugs by the victim and
11 the use of force by the perpetrator are not mutually exclusive. Indeed, the intoxicated state of the
12 victim may facilitate the use of force by the perpetrator. Accordingly, this evidence is
13 admissible.

14 However, the Court EXCLUDES any evidence regarding Jen B.'s urination in the street.
15 Defense argues that this constitutes evidence of Jen B.'s intoxication prior to the incident. There
16 are a multitude of reasons why one may urinate in the street that are unrelated to alcohol
17 consumption. To spend trial time debating all of those reasons is collateral and time consuming.
18 Furthermore, the defense has no contrary evidence to show that Jen B. consumed alcoholic
19 beverages prior to her urination, and she denies having had any such beverages. Thus, defense is
20 requesting permission for the jury to wholly speculate, which is directly contrary to the charge
21 that the Court will give the jury. The Court finds that such assertion is speculative at best and
22 more prejudicial than probative. For reasons pursuant to Section 352, the Court will not allow
23 questions in this area.

24 **4. Expert Testimony:**

25 It is not merely the right, but the duty of a trial judge to see that the evidence is fully
26 developed before the trier of fact and to assure that ambiguities and conflicts in the evidence are
27 resolved insofar as possible. People v. Williams, (2017) 7 Cal.App.5th 644. The trial court's
28 determination that a witness qualifies as an expert is a matter of discretion. People v. Rodriguez,

1 (2014) 58 Cal.4th 587. The trial court acts as a gate keeper to exclude expert opinion testimony
2 that is 1) based on a matter of a type on which an expert may not reasonably rely, 2) based on
3 reasons unsupported by the material on which the expert relies or 3) speculative. The goal of the
4 trial court as gate keeper is to exclude expert opinion testimony that is clearly invalid and
5 unreliable. A trial court, as gate keeper, does not resolve scientific controversies. A court must
6 not weigh an expert opinion's probative value or substitute its own opinion for the expert's
7 opinion. People v. Lund, (2021) 64 Cal.App.5th 1110. Whether a person qualifies as an expert
8 in a particular case depends on the facts of the case and the witness's qualifications. People v.
9 Tuggle, (2012) 203 Cal.App.4th 1071.

10 An expert witness may testify in the form of an opinion if that opinion is related to a subject
11 that is sufficiently beyond the common experience and the expert's opinion will assist the trier of
12 fact. *Evidence Code Section 801*. A person may testify as an expert if he has special knowledge,
13 skill, experience, education or training sufficient to qualify him as an expert. In re Brandon G.,
14 (2008) 160 Cal.App.4th 1076. The competency of an expert is relative to the topic and fields of
15 knowledge about which the person is asked to testify. People v. DeHoyos, (2013) 57 Cal.4th 79.

16 The decisive consideration in determining the admissibility of expert opinion evidence is
17 whether the subject of the inquiry is one of such common knowledge that people of ordinary
18 education could reach a conclusion as intelligently as the witness or whether, on the other hand,
19 the matter is sufficiently beyond the common experience that the opinion of expert would assist
20 the trier of fact. People v. Brown, (2001) 96 Cal.App.4th Supp. 1. The jury need not be wholly
21 ignorant of the subject matter of the expert opinion in order for it to be admissible. Rather,
22 expert opinion testimony will be excluded only when it would add nothing at all to the jury's
23 common fund of information, for example when the subject of inquiry is one of such common
24 knowledge that people of ordinary education could reach a conclusion as intelligently as the
25 witness. People v. Dalton, (2019) 7 Cal.5th 166. In determining the admissibility of expert
26 testimony, the pertinent question is whether, even if jurors have some knowledge of the subject
27 matter, expert opinion testimony would assist the jury. People v. Lindberg, (2008) 45 Cal.4th 1.

1 An expert opinion may assist the jury in evaluating the evidence, even when common sense
2 would explain its meaning. People v. Jackson, (2013) 221 Cal.App.4th 1222.

3 Once an expert witness establishes knowledge of a subject sufficient to permit his opinion to
4 be considered by the jury, the question of degree of the witness's knowledge goes to the weight
5 of the evidence, not its admissibility. People v. Brown, (2014) 59 Cal.4th 86. In addition to
6 matters within their own personal knowledge, experts may relate information acquired through
7 training and experience, even though that information may have been derived from conversations
8 with others, lectures, study of learned treatises, etc., and when giving such testimony, the expert
9 often relates relevant principles or generalized information rather than reciting specific
10 statements made by others. People v. Clotfelter, (2021) 65 Cal.App.5th 3

11 Experts may rely on background information accepted in the field of expertise, information
12 within their personal knowledge, and nontestimonial hearsay properly admitted under a statutory
13 hearsay exception, and an expert may also rely on hearsay in forming an opinion and may tell the
14 jury in general terms that he or she did so. What an expert cannot do is relate as true case-
15 specific facts asserted in hearsay statements, unless they are independently proven by competent
16 evidence or are covered by a hearsay exception. People v. Roa, (2017) 11 Cal.App.5th 443.

17 An expert is generally not permitted to supply case specific facts which are those facts
18 relating to particular events and alleged to have been involved in the case being tried, about
19 which the expert has no personal knowledge. However, like any other witness, experts can relate
20 what they have personally observed and that testimony would not be hearsay. People v.
21 Valencia, (2021) 11 Cal.5th 818.

22 Once qualified as an expert, cross examination of the expert is limited by Evidence Code
23 Section 721. Pursuant to Section 721, an expert may be cross examined as to her qualifications,
24 the subject to which her expert testimony relates and the matter upon which her opinion is based
25 and the reasons for her opinion. "If a witness testifying as an expert testifies in the form of an
26 opinion, she may not be cross-examined in regard to the content or tenor of any scientific,
27 technical, or professional text, treatise, journal, or similar publication unless the witness refers to
28 the publication in forming her opinion, the publication is admitted into evidence and the

1 publication is established as a reliable authority.” *Evidence Code Section 721; McGanty v.*
2 *Department of Transportation*; (1992) 8 Cal.App.4th 677. In addition, a party may ask an
3 opposing expert whether she is aware of material relevant to the subject matter of the expert’s
4 opinion but may not introduce the content of the material unless the expert referred to or relied
5 upon the material. *McGanty v. Department of Transportation*, 8 Cal.App.4th 677. The party
6 attacking the credibility of an expert may bring to the jury’s attention material that is relevant to
7 the issue of which the expert was unaware, but that party may not, by its questions, testify
8 regarding the content of that material. *People v. Visciotti*, (1992) 2 Cal.4th 1.

9 If admitted into evidence, the publication may not be received as an exhibit. *Evidence Code*
10 *Section 721*. Furthermore, an expert witness may not be cross examined regarding matters that
11 are not relevant to the expert’s opinion or qualifications. *People v. Smithey*, (1999) 20 Cal.4th
12 936. Exploration of an expert’s opinion based on specific facts outside of the expert’s personal
13 knowledge can be accomplished through the use of hypothetical questions. *People v. Valencia*,
14 (2021) 11 Cal.5th 818.

15 Although expert witnesses frequently acquire knowledge in their field of expertise from
16 hearsay sources, the hearsay rule has traditionally not barred an expert’s testimony regarding his
17 general knowledge in his field of expertise. *People v. Yates*, (2018) 25 Cal.App.5th 474. An
18 expert may rely upon experiences and conversations she has had and information she has
19 obtained without the necessity of providing the specifics of such experiences and conversations.
20 *Howard Entertainment Inc. v. Kudrow*, (2012) 208 Cal.App.4th 1102.

21 **A. Rape Trauma Expert, Domestic Violence Expert, Dr. Ziv**

22 Evidence Code Section 1107 specifically allows for expert testimony regarding intimate
23 partner battering and its effects in criminal actions. Section 1107 provides in part “[i]n a
24 criminal action, expert testimony is admissible by either the prosecution or the defense regarding
25 intimate partner battering and its effects, including the nature and effect of physical, emotional,
26 or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except
27 when offered against a criminal defendant to prove the occurrence of the act or acts of abuse
28

1 which form the basis of the criminal charge. . . . For purposes of this section, "abuse" . . . may
2 include acts defined in . . . Section 261 . . . of the Penal Code." *Evidence Code Section 1107.*

3 In addition, evidence regarding rape trauma syndrome and the impact of alcohol and drugs on
4 memory are areas that fall outside the common knowledge of the jury. This testimony is
5 admissible to counter long held myths and assumptions about the conduct of rape victims.
6 People v. Bledsoe, (1984) 36 Cal.3d 236.

7 **B. Scientology Expert, Claire Headley**

8 Former members of a particular group can qualify as experts regarding that particular group.
9 In People v. Sanchez, a former gang member qualified as a gang expert regarding the gang's
10 structure and policies. People v. Sanchez, (2014) 232 Cal.App.4th 197. The former gang
11 member testified that defendants were members of a gang affiliated with his own gang. He
12 further testified that gang members gain respect by committing acts of violence including attacks
13 on rival gang members and that gang members may brag about such acts in custody. The
14 Sanchez court held that this testimony was relevant in a murder and attempted murder case of
15 rival gang members to support the credibility of the jail inmates who testified that defendant had
16 confessed crimes to them despite not knowing them outside of jail. Id.

17 The subject matter of the culture and habits of street gangs meets the criterion for admissible
18 expert testimony. People v. Ewing, (2016) 244 Cal.App.4th 359. In addition, the fact that it is
19 unacceptable for gang members to cooperate with the police and police investigations was a
20 proper subject matter for a qualified police officer to testify about. People v. Hill, (2011) 191
21 Cal.App.4th 1104. In People v. Lindberg, expert testimony on white supremacy was admissible
22 in a special circumstance murder jury trial though some jurors may have possessed some general
23 knowledge of the subject of white supremacy. People v. Lindberg, (2008) 45 Cal.4th 1. Such
24 testimony assisted the jury because it provided a basis of information about white supremacist
25 beliefs and tenets from which they could determine evaluate the evidence presented to them. Id.

26 **C. LAPD Analyst Regarding Toxicology:**

27 The People seek to introduce the testimony of a LAPD Analyst to generally discuss date rape
28 drugs and the impact of the consumption of such drugs.

1 COURT FINDING AND ORDER: The Court ADMITS the proffered expert testimony of Dr.
2 Barbara Ziv on the subjects of 1) intimate partner sexual assault and violence and 2) effects of
3 alcohol and drugs on the brain and memory.

4 The Court also GRANTS the admission of the proffered expert testimony of Claire Headley
5 on the subjects of 1) Scientology teachings that a person in an intimate relationship cannot be
6 raped; 2) that Scientologists cannot use the word rape and 3) that Scientologists are prohibited or
7 discouraged from reporting other Scientologists in good standing to outside law enforcement or
8 face repercussions for doing so; and 4) the purpose and meaning of conversations with,
9 statements to, and correspondence between the victims and Scientology officials regarding the
10 charged incidents. The Court finds that the proffered subjects fall outside the common
11 knowledge of the lay person and that the proffered testimony would assist the jury. The Court
12 finds that questions of qualifications and bias go to the weight, not the admissibility of the
13 proffered testimony.

14 The Court GRANTS the testimony of an LAPD analyst regarding toxicology and date rape
15 drugs in the People's case in chief. How date rape drugs are ingested and the impact of ingesting
16 date rape drugs are beyond the common knowledge of the jury. The toxicologist cannot render
17 an opinion if date rape drugs were utilized in conjunction with any of the charged or uncharged
18 incidents. However, the toxicologist may render an opinion regarding a hypothetical that
19 contains facts established by the evidence in the instant case.

20 COURT FINDING AND ORDER REGARDING NOTICE AND REQUEST FOR
21 CONTINUANCE: Finally, the Court finds that defendant had sufficient notice to prepare for
22 these witnesses for jury trial and that the People have complied with the notice requirement
23 pursuant to Penal Code Section 1054.7. Discovery regarding Dr. Ziv was provided on March 15,
24 2023, more than 30 days prior to the start of trial. Moreover, the subject matter of the proposed
25 expert was disclosed to the defense prior to the first trial and the defense prepared for and cross
26 examined a different expert on this same or similar subject matter at the first trial. The People
27 are simply using a different expert because the first expert is now unavailable. The discovery
28 regarding Claire Headley was likewise disclosed to the defense prior to the commencement of

1 the first trial and thus has been in the possession of the defense for at least 6 months. Similarly,
2 notice of the proposed toxicologist was provided timely within the meaning of Penal Code
3 Section 1054.7. The toxicologist will be providing general testimony regarding the subject
4 matter of date rape drugs and has not conducted any tests regarding nor interviewed any
5 witnesses in the above captioned case.

6 Finally, even with the start of jury selection on April 17, 2023, it is likely that witness
7 testimony will start approximately a week later. It is also likely that expert testimony will be
8 presented later in the People's case in chief. Assuming opening arguments start approximately
9 April 24, 2023, experts may testify in late April or even May. This affords the defense, at the
10 minimum, 6 weeks from the time of notice and possibly up to 2 months to prepare for cross
11 examination. Defendant has adequate notice to prepare for the experts.

12 The Court is GRANTING a defense request to continue the jury trial from April 11, 2023, to
13 April 17, 2023. Any request for a further continuance of the trial date from commencement on
14 April 17, 2023, on grounds previously considered by the Court is DENIED.

15 This evidence is still subject to Evidence Code Section 352 as will be determined and ruled
16 upon by the Court during the presentation of the evidence at trial.

17 **5. Uncharged Sex Offenses and Prior Bad Acts:**

18 Evidence Code Sections 1108, 1109 and 1101(b) allow for the admission of uncharged bad
19 acts. Section 1108 specifically states that "[i]n a criminal action in which the defendant is
20 accused of a sexual offense, evidence of the defendant's commission of another sexual offense or
21 offenses is not inadmissible by Section 1101, if the evidence is not inadmissible pursuant to
22 Section 352." *Evidence Code Section 1108.*

23 Section 1101(b) sets forth that "[n]othing in this section prohibits the admission of evidence
24 that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such
25 as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or
26 accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted
27 unlawful act did not reasonably and in good faith believe that the victim consented) other than
28 his or her disposition to commit such an act." *Evidence Code Section 1101(b).*

1 In general, in determining whether a trial court properly weighed prejudice against probative
2 value in admitting evidence of prior sex offenses, the probative value of the evidence must be
3 balanced against four factors: 1) the inflammatory nature of the uncharged conduct; 2) the
4 possibility of confusion of issues; 3) the remoteness of the time of the uncharged offenses; and 4)
5 the amount of time involved in introducing and refuting the evidence of the uncharged offenses.
6 People v. Hollie; (2010) 180 Cal.App.4th 1262.

7 Factors to consider under 352 analysis of 1108 evidence: 1) whether propensity evidence has
8 probative value i.e. whether the uncharged conduct is similar enough to charged behavior to tend
9 to show that defendant did in fact commit the charged offense; 2) whether propensity evidence is
10 stronger and more inflammatory than charged offense; 3) whether uncharged conduct is remote
11 or stale; 4) whether propensity evidence is likely to confuse or distract the jurors from their main
12 inquiry and 5) whether the admission of propensity evidence will require an undue consumption
13 of time. To consider propensity evidence of a defendant's commission of a prior sexual offense,
14 the jury must find the prosecution has proved the elements of the offense by a preponderance of
15 the evidence. People v. Jandres, (2014) 226 Cal.App.4th 340. Lack of similarity is relevant to
16 the court's decision whether to exclude assault propensity evidence under 1101(b) as more
17 prejudicial than probative, that factor is not dispositive. People v. Merriman, (2014) 60 Cal.4th 1.

18 Under evidence provision governing the admission of evidence of other sex crimes, charged
19 and uncharged crimes need not be sufficiently similar as otherwise the evidence provision
20 relating to sex crimes, 1108, would serve no purpose, and it is enough that the charged and
21 uncharged offenses are sex crimes. People v. Escudero, (2010) 183 Cal.App.4th 302. Unlike
22 1101(b) evidence, 11088 evidence need not be similar to the charged offense. However, if the
23 prior sexual offenses are very similar in nature to the charged offenses, the prior offenses have
24 greater probative value in proving propensity to commit the charged offenses. People v. Branch,
25 (2001) 91 Cal.App.4th 274.

26 In addition to uncharged sex acts, prior acts of domestic violence are also admissible for
27 similar purposes. Prior threats and acts of violence against a victim are admissible to establish
28 motive in a prosecution involving violence or threat of violence against the same victim. People

1 v. Fruits, (2016) 247 Cal.App.4th 188. A defendant charged with the forcible rape of his live-in
2 girlfriend was also accused of domestic violence. Evidence of other acts of domestic violence
3 was also potentially admissible. People v. Poplar, (1999) 70 Cal.App.4th 1129.

4 Defendant asserts that the acts are not sufficiently similar to warrant their admission.
5 Contrary to defendant's position, a distinctive modus operandi is not required to be admissible
6 for this purpose. People v. Kovocich, (2011) 201 Cal.App.4th 863. Whether other crimes or bad
7 conduct evidence is admitted to show motive, intermediate fact which may be probative of such
8 ultimate issues as intent, identity or commission of the criminal act itself, other crimes or
9 conduct evidence may be dissimilar to the charged offenses provided there is a direct relationship
10 or nexus between it and the current alleged crimes. People v. Cage, (2015) 62 Cal.4th 256.

11 COURT FINDING AND ORDER: The Court ADMITS the testimony of Christina B.'s
12 testimony regarding the uncharged sexual assault, Tricia V.'s testimony regarding 2 incidents of
13 uncharged conduct and Kathleen J.'s testimony regarding uncharged conduct. Defendant, at the
14 first trial, argued that all of the charged sexual incidents in fact, never occurred and that the
15 victims colluded together to manufacture the charges against defendant. Thus, the defense is
16 squarely attacking the victims in all aspects of their testimony and alleging that their recounting
17 of the charged incidents are utter fabrication. By emphasizing collusion and fabrication on the
18 part of the victims, the Court finds that the 1108, 1109 and 1101(b) evidence to be more
19 probative than prejudicial. The testimony of Tricia V., Kathleen J. and Christina B. regarding
20 uncharged bad acts is admissible.

21 COURT FINDING AND ORDER REGARDING NOTICE AND REQUEST TO
22 CONTINUANCE: For the reasons set forth above, the Court finds that defense has had
23 sufficient notice to prepare for the proffered 1108 testimony. Accordingly, any request for the
24 continuance of the commencement of the trial date from April 17, 2023, is DENIED.

25 **6. Victims' Prior Sexual Histories and Partners:**

26 Evidence Code Section 1103(c)(1) states that in prosecutions for sex offenses including rape,
27 opinion evidence, reputation evidence, and evidence of specific instances of the complaining
28

1 witness' sexual conduct, or any of that evidence, is not admissible by the defendant in order to
2 prove consent by the complaining witness. *Evidence Code Section 1103.*

3 Exclusion of some or all of the evidence of a victim's sexual history does not deny a sexual
4 assault defendant a fair trial. People v. Mestas, (2013) 217 Cal.App.4th 1509. Allegations that a
5 complaining witness previously made false allegations against another man were inadmissible at
6 trial for lewd conduct on a child under 14 as there was no credible evidence that the complaining
7 witness had previously made such false accusations. People v. Waldie, (2009) 173 Cal.App.4th
8 358.

9 In a sex offense trial, the witness's testimony that during his 19-month relationship with the
10 victim, he had exchanged drugs or money with her for sex was properly excluded for
11 impeachment purposes. The victim's willingness to exchange sex for drugs during the long-term
12 sexual relationship had little or no bearing on her willingness to exchange sex for drugs on a
13 routine basis. The witness's testimony that the victim was known to trade sexual favors for
14 drugs was properly excluded for impeachment purposes. People v. Chandler, (1997) 56
15 Cal.App.4th 703. In addition, the statute generally excluding evidence of specific instances of a
16 complaining witness's sexual conduct when offered to prove consent by the complaining witness
17 is inapplicable where defendant seeks to introduce evidence of allegedly false complaints of
18 rape, rather than of sexual conduct. People v. Tidwell, (2008) 163 Cal.App.4th 1447.

19 A defendant generally cannot question a sexual assault victim about her prior sexual activity.
20 However, a limited exception is applicable if the victim's prior sexual history is relevant to the
21 victim's credibility. People v. Bautista, (2008) 163 Cal.App.4th 762. Victims' prior false sexual
22 assault reports regarding other unrelated incidents and men were properly excluded. People v.
23 Tidwell, 163 Cal.App.4th 1447.

24 **COURT FINDING AND ORDER:** The Court EXCLUDES the victims', charged and
25 uncharged, prior sexual history and prior sexual partners. This includes the exclusion of alleged
26 incidents of N. Trout's prior sexual history and prior sexual partners, Jen B.'s claim of rape by
27 Aikan Abrey, alleged sexual conduct between Jen B. and Bryton Goss, any dating relationship
28 between Jen B. and any other partner including an officer from the LAPD Wilshire Station,

1 testimony regarding Johnny Houston's statement of opinion about Christina B., and any
2 statement by Christina B. regarding intimacy with the defendant's brother, whether true or
3 untrue. Should defendant seek to introduce any evidence regarding the sexual conduct of the
4 complaining witnesses to attack their credibility, defendant must follow the procedure set forth in
5 Evidence Code Section 782 or at the very least, notify the Court prior to seeking the introduction
6 of such testimony.

7 **7. Harrassment of and/or Threats to the Complainants and Witnesses**

8 It is well established that a witness's subjective belief that he or she has been threatened or
9 harassed in connection with the incident giving rise to the litigation is admissible. Moreover, the
10 perceived threat or harassment need not come directly from or be attributed to the defendant nor
11 does the event need to have actually transpired in order to be admissible as it bears on the
12 witness's credibility.

13 Evidence that a witness is afraid to testify or fears retaliation for testifying is relevant to the
14 credibility of that witness and is therefore admissible, and an explanation of the basis of the
15 witness's fear is likewise relevant to her credibility and is well within the discretion of the trial
16 court. Evidence of a third party's threat against a witness may bear on the witness's credibility
17 and is therefore relevant whether or not the threat is directly linked to the defendant. People v.
18 Abel, (2012) 53 Cal.4th 891. A witness's fear is relevant to his or her credibility, especially when
19 it provides an explanation for conflicting statements by the same witness. People v. Johnson,
20 (2015) 61 Cal.4th 734. In addition, evidence explaining the basis for a witness's fear of testifying
21 is relevant to the witness's credibility and is well within the discretion of the trial court to admit
22 and is thus, admissible. People v. Gonzalez, (2006) 38 Cal.4th 932.

23 Evidence explaining the reason for the witness's fear of testifying is relevant to the witness's
24 credibility. It is not necessarily the source of the threat, but its existence that is relevant to the
25 witness's credibility and is thus, admissible. People v. Sandoval, (2015) 62 Cal.4th 394.

26 Evidence that a witness is afraid to testify or fears retaliation for testifying is relevant to the
27 credibility of that witness and is thus admissible, and evidence of any explanation of the basis for
28 such fear is likewise relevant to the jury's assessment of the witness's credibility and is

1 admissible for that nonhearsay purpose, but not for the truth of the matters asserted. People v.
2 Chism, (2014) 58 Cal.4th 1266.

3 Evidence that third persons threatened witness to a shooting was relevant to the witness's
4 state of mind, attitude, actions, bias and prejudice and thus was admissible in a murder
5 prosecution. Just as the fact that the witness expects to receive something in exchange for
6 testimony may be considered in evaluating his or her credibility, the fact that the witness is
7 testifying despite recrimination is important to fully evaluate his or her credibility and for this
8 purpose, it matters not the source of the threat. People v. Olguin, (1994) 31 Cal.App.4th 1355.

9 In a capital murder trial, the prosecution could question witnesses about their reluctance to
10 testify even if there was no nervousness or fear which interfered with their ability to testify
11 truthfully, where witnesses were former drug users, most had been in consensual sexual
12 relationships with the defendant and none had reported defendant's sexual assaults to the police
13 until years after the incidents had occurred and the prosecutor could reasonably anticipate that
14 the defense would vigorously challenge the witnesses' credibility at trial. The witnesses'
15 testimony that they feared retaliation for testifying was relevant at trial. People v. Merriman,
16 (2014) 60 Cal.4th 1.

17 Furthermore, testimony that a witness is fearful of retaliation relates to that witness's
18 credibility and is admissible, even if there is no evidence that the threats against the witnesses
19 were made by the defendant personally, or that the witness's fear of retaliation is directly linked
20 to the defendant. People v. Williams, (2013) 58 Cal.4th 197. It is important to note that
21 recantation or inconsistent testimony is not a prerequisite for the admission of evidence of a third
22 party's threat against a witness or the witness's fear. People v. Mendoza, (2011) 52 Cal.4th 1056.

23 **COURT FINDING AND ORDER:** The Court ADMITS testimony regarding the witnesses
24 fear of retaliation, fear of being declared a suppressive person and thus separated from family
25 and friends or excommunicated from Scientology, belief that they had been harassed by
26 Scientology for cooperating with police regarding the charged offense, the fact that the victims
27 filed a civil law suit alleging instances of stalking and harassment related to reporting the
28 charged incidents in the above captioned case, and the settlement agreement regarding the

1 incident and the amount paid pursuant to the agreement entered into between Jen B. and
2 defendant. This evidence is more probative than prejudicial and is relevant to the evaluation of
3 the witness's credibility and truthfulness, to the evaluation of any inconsistencies between
4 witnesses statements, to explain the witnesses actions after the incidents and to explain the delay
5 in reporting the incidents to outside law enforcement.

6 **8. Jen B.'s Lay Opinion that Attempted Penetration was Accidental:**

7 A lay witness generally may not give an opinion about another person's state of mind but may
8 testify about objective behavior and describe that behavior. People v. Sanchez, 63 Cal.4th 411
9 (2016).

10 COURT FINDING AND ORDER: The Court EXCLUDES any questions of Jen B.
11 regarding her lay opinion of whether, in 2002, defendant accidentally attempted to penetrate her
12 anus with his penis. This falls outside Evidence Code Section 800 as permissible lay opinion
13 testimony as Jen B. cannot testify to defendant's state of mind. She can, however, testify to
14 defendant's actions and objective behavior.

15 **9. Detective Reyes' Testimony Re Victims' Statements:**

16 Evidence Code Section states that "[e]vidence of a statement made by a witness is not made
17 inadmissible by the hearsay rule if the statement is inconsistent with his testimony at the hearing
18 and is offered in compliance with Section 770 ." *Evidence Code Section 1235.*

19 Evidence Code Section 1236 states that "[e]vidence of a statement previously made by a
20 witness is not made inadmissible by the hearsay rule if the statement is consistent with his
21 testimony at the hearing and is offered in compliance with Section 791." *Evidence Code Section*
22 *1236.*

23 Finally, Evidence Code Section 356 states "[w]here part of an act, declaration, conversation,
24 or writing is given in evidence by one party, the whole on the same subject may be inquired into
25 by an adverse party; when a letter is read, the answer may be given; and when a detached act,
26 declaration, conversation, or writing is given in evidence, any other act, declaration, conversation
27 or writing which is necessary to make it understood may also be given in evidence." *Evidence*
28 *Code Section 356.*

1 Police interviews of victims and witnesses are often admitted as prior consistent statements to
2 trial testimony after such testimony is attacked as fabrication on cross examination. A charge of
3 recent fabrication by defense counsel may be inferred when a witness is questioned about the
4 lack of speaking on an important matter at the time when it would have been natural for one to
5 do so. When that inference does arise, it is generally proper to permit rehabilitation by prior
6 consistent statements. People v. Lopez, (2013) 56 Cal.4th 1028; People v. Manson, (1976) 61
7 Cal.App.3d 102.

8 Defense counsel's broad charge of fabrication against a witness warranted admission of a prior
9 consistent statement for purposes of rehabilitating the witness. Where defense counsel brought
10 out on cross examination inconsistencies between the witness's testimony and the testimony of
11 other witness's, and defense counsel's implied charge was that the witness's entire testimony
12 was unreliable, not just that the witness had fabricated some specific point, the witness was
13 properly rehabilitated with her prior consistent statements. People v. Brents, (2012) 53 Cal.4th
14 599.

15 In People v. Calhoun, a human trafficking victim's statement made during an interview with
16 police detectives as related by the police detectives during trial was admissible under the hearsay
17 exception for consistent statements following the victim's testimony where defendant made a
18 broad implicit charge of fabrication during the victim's testimony. People v. Calhoun, (2019) 38
19 Cal.App.5th 275. Video taped interviews that the police conducted of the victim and her son
20 were admissible as prior consistent statements. Defense counsel implied on cross examination
21 that both the victim and her son had fabricated portions of their trial testimony. People v.
22 Williams, (2002) 102 Cal.App.4th 995.

23 The purpose of the statute regarding the doctrine of completeness is to prevent the use of
24 selected aspects of a conversation, act, declaration or writing, so as to create a misleading
25 impression on the subjects addressed. People v. Clark, (2016) 63 Cal.4th 522; People v. Chism,
26 (2014) 58 Cal.4th 1266; People v. Pearson, (2013) 56 Cal.4th 393.

27 In the event a statement admitted in evidence constitutes part of a conversation, the opponent
28 is entitled to have placed in evidence all that was said or written by or to the declarant in the

1 course of the conversation provided the other statements have some bearing upon, or connection
2 with, the admission or declaration in evidence. People v. Parrish, (2007) 152 Cal.App.4th 263.
3 Reliability of the evidence is not a factor in determining admissibility under the rule of
4 completeness. Indeed, the evidence proffered by the defense and the People may be unreliable.
5 Id.

6 Tape recordings of the interviews of the witnesses conducted by the police investigator were
7 properly admitted under the rule of completeness in a murder trial. The defense cross examined
8 the witness regarding an interview with the inspector and thus put the conversation itself into
9 evidence as the subject of the cross examination. The tape recording did not constitute a
10 different conversation than the conversation recounted by the witness during cross examination
11 and the People were entitled to place in evidence all that was said by the witness during the
12 interview. People v. Clark, 63 Cal.4th 522. Furthermore, there was no violation of the
13 confrontation clause because the witnesses were available for cross examination. Id.

14 In People v. Harrison, once a defendant in a murder case introduced portion of a witness's
15 interview with police into evidence, the People were entitled to introduce the remainder of the
16 interview to place in context the isolated statements of the witness related by the officer on
17 examination by the defense. People v. Harrison, (2005) 35 Cal.4th 208.

18 **COURT FINDING AND ORDER:** The Court ADMITS the testimony of Detective Reyes
19 regarding inconsistent and consistent statements of the victims as set forth below. If defendant
20 impeaches the victims with portions of Detective Reyes's report encapsulating their interviews
21 with inconsistent statements, the People are allowed to bring forth those statements from the
22 same interview that are consistent with the victims' trial testimony as well as the entirety of the
23 remainder of the interviews, subject to any 352 determinations. The defense cross examined
24 each victim at length regarding all statements made about the incidents including all statements
25 made to various police officials.

26 The defense alleges that the victims have colluded together to fabricate their entire version of
27 events and further alleges that the charged incidents never occurred. In so questioning, the
28 defense makes a broad claim of fabrication as to all victims. In addition, defense questioned

1 both the victims and the police officers regarding various statements, both what was in those
2 statements and what was missing from those statements. Thus, various statements were admitted
3 by the defense as prior inconsistent statements, and then later by the People as prior consistent
4 statements. If defense brings forth portions of statements of victims as inconsistent with their
5 trial testimony, the People may bring forth the full interview of the witnesses as prior consistent
6 statements.

7 **10. Pending Civil Suit and 2004 Settlement Agreement:**

8 The Court has discretion to determine what, if any, portions of prior or pending civil
9 litigations may be admitted in a criminal jury trial. The trial court appropriately exercised its
10 discretion when limiting defendant's cross examination of the victim on his alleged financial bias
11 based on a pending civil lawsuit. The fact of the victim's civil lawsuit and his civil lawyer's
12 presence at the criminal trial were presented to the jury and further consumption of time in
13 questioning the victim about his purpose in filing the lawsuit and the victim's knowledge of the
14 details of the civil complaint outweighed the probative value of such testimony. People v. Lee,
15 (2015) 242 Cal.App.4th 161.

16 Similarly, a trial Court did not abuse its discretion in determining that any probative value of
17 evidence relating to a surviving victim's civil lawsuit was outweighed by the potential for delay
18 and substantial risk of confusing issues and misleading jurors so that the evidence was
19 inadmissible in a capital murder prosecution. Any relevance would have been minimal and the
20 introduction of evidence could have permitted the focus of the trial to shift to the conduct of law
21 enforcement officers. Exclusion of this evidence was merely an exercise of the court's
22 discretionary power to preclude examination on collateral matters and did not impact defendant's
23 constitutional rights. People v. Hart, (1999) 20 Cal.4th 546.

24 **COURT FINDING AND ORDER:** The Court ADMITS evidence regarding the facts that the
25 victims filed a civil lawsuit in 2017, which is still pending, alleging claims of harassment and
26 stalking against defendant, the Scientology organization and David Miscavige, and seeking
27 damages. The Court EXCLUDES any further inquiry into this matter.
28

1 **11. Judicial Notice of CCP 340.3:**

2 Although the existence of a document may be judicially noticeable, the truth of the statements
3 contained therein, and its proper interpretation are not subject to judicial notice if those matters
4 are reasonably disputable. Fremont Indemnity Co. v. Fremont General Corp., (2007) 148
5 Cal.App.4th 97. Even when the moving party provides the adverse party with notice of the
6 request for judicial notice of court records, the reviewing court retains some discretion to deny
7 judicial notice. People v. McDaniel, (2021) 12 Cal.5th 97.

8 Moreover, this section did NOT apply to an action brought by a former member of the boy's
9 organization arising out of alleged sexual molestation by a former leader of the organization
10 where the former leader was convicted of a felony which did not arise out of the same conduct
11 which was at issue in the civil suit. Snyder v. Boy Scouts of America, (1988) 205 Cal.App.3d
12 1318.

13 **COURT FINDING AND ORDER:** The Court EXCLUDES any testimony or evidence
14 regarding CCP 340.3. Defense wants to argue that the existence of civil statutory law extending
15 the statute of limitations under certain circumstances for certain sex offenses provides a motive
16 for the victims to lie in the instant case. In so doing, defense alleges that the victims are further
17 motivated to fabricate the charged offenses so that upon conviction in the criminal case, they can
18 bring a new civil action against defendant for the specific sex offenses. All of this is speculative
19 and requires the jurors to both speculate about actions which have not yet occurred, and to
20 further consider the impact of a guilty verdict on the defendant. With the exception of a death
21 penalty case, this type of argument is in direct conflict with the charge a trial court gives to every
22 jury in a criminal case. The Court finds that this proffered evidence is speculative, irrelevant or
23 collateral at best. Furthermore, it would be confusing and misleading to the jury. Thus, it is
24 excluded.

25 **12. Defendant's Possession of Guns**

26 Jen B. testified that defendant displayed a gun during the charged incident. An independent
27 record search established that defendant had a firearm registered to him during the relevant time
28

1 period. The Court ADMITS this evidence. However, the Court EXCLUDES any reference to
2 other firearms unless permission is first sought from the Court for its admission.

3 **13. Girls Gone Wild References:**

4 The Court EXCLUDES this evidence unless permission is first sought from the Court for its
5 admission.

6 **14. Detective Vargas's Instruction to Jen B. Re Clarifications:**

7 The Court RESERVES ruling on this until the Court hears the testimony and proposed
8 questions during trial.

9 **15. "Gun" has Special Meaning to Police Report Writing:**

10 The Court EXCLUDES this evidence. Detective Schlegel can testify that the word gun has
11 unique importance to him based upon his training, but he cannot and does not speak for all law
12 enforcement generally, all Los Angeles Police Department officers, nor all officers at a particular
13 station.

14 **16. Jen B.'s Omission to Detective Schlegel:**

15 The Court RESERVES ruling on this until the Court hears the testimony and proposed
16 questions during trial.

17 **17. Scientology Lawyer's Actions regarding Trial Witnesses:**

18 The Court RESERVES ruling on this until the Court hears the testimony and proposed
19 questions during trial.

20 **18. Defendant's DJ Name of "DJ Donkey Punch":**

21 Evidence of a nickname or moniker may be relevant in a criminal trial. In People v. Lee,
22 evidence of a capital murder defendant's nickname "Point Blank" was relevant to the issue of the
23 identity of the killer where the victim was shot multiple times in the head at close range. People
24 v. Lee, (2011) 51 Cal.4th 620. The Lee court held that the nickname was extremely probative of
25 the defendant's intent even though the nickname was cumulative of other evidence regarding
26 identity and even though the nickname implied gang membership or prior criminal activity. Id.
27 During the time of the charged incidents, defendant would sometimes work as a disc jockey
28

1 RESERVES ruling on this until the Court hears the testimony and proposed questions during
2 trial.

3 **19. Testimony regarding Lily:**

4 The Court EXCLUDES any mention of Lily or the circumstances surrounding her death and
5 alleged incident involving defendant.

6 **20. N. Trout's Prior Incidents with Watson and Others and her Father's Death:**

7 The Court RESERVES ruling on this until the Court hears the testimony and proposed
8 questions during trial. However, the Court ADMITS testimony regarding N. Trout's previous
9 attempts to report sexual assaults, if any, to officials within the Scientology organization and
10 how the previous interaction with Scientology officials impacted her conduct related to the
11 charged offense.

12 **21. Testimony of Nicolas Olszewski:**

13 The Court EXCLUDES the testimony of Nicolas Olszewski in the People's case in chief.
14 Pursuant to Penal Code Section 352, the Court finds this testimony unduly time consuming and
15 remote in time, having occurred more than a decade after the most recent charged incident.
16 Moreover, this proffered testimony does not establish that defendant had this knowledge in the
17 period of time from 2000 to 2004. Should defendant testify on his own behalf or the door be
18 opened as to this testimony, the People may request reconsideration of this ruling.

19 **22. Mention of "D.A. Reject" Status:**

20 The manner in which the law should apply to particular facts is a legal question and is not
21 subject to expert opinion. King v. State of California, (2015) 242 Cal.App.4th 265. An expert is
22 not allowed to give an opinion on whether a witness is telling the truth. People v. Long, (2005)
23 126 Cal.App.4th 865. In addition, an expert witness may not give an opinion as to whether
24 another witness is telling the truth or whether the defendant is guilty. People v. Lapenias, (2021)
25 67 Cal.App.5th 162.

26 COURT FINDING AND ORDER: The Court EXCLUDES any mention or reference to the
27 status of the case or investigation as a "D.A. Reject." This is irrelevant, misleading to the jury
28 and unduly time consuming. Such evidence leads the jury to infer that the District Attorney's

1 Office did not believe Jen B. when in fact, there are many reasons why a case may not initially
2 be filed. To rebut this evidence would require the District Attorney's Office employees to
3 become witnesses in the case and to possibly assert that they do in fact believe that Jen B. is
4 truthful and that defendant is guilty – both opinions of which would be improper to render in
5 front of the jury. The defense may bring forth that in 2004, and then again more than a decade
6 later, the Detectives had contact with the District Attorney's Office regarding the 2003 incident.
7 The defense may also bring forth that after the later contact Detectives had with the District
8 Attorney's Office, charges were filed shortly thereafter. The Court will not allow ANY
9 questions regarding the opinions or actions of the District Attorney's Office in the intervening
10 time, any questions or use of the term "DA reject" or "declination" or any questions regarding
11 actions taken by the District Attorney's office in 2004 regarding the 2003 incident. Pursuant to
12 Penal Code Section 352, the Court finds that this term and status and any questions in this area
13 are more prejudicial than probative, confusing to the jury and misleading. What is relevant is
14 whether the jury believes the charges have been proved at trial, not the opinion of the District
15 Attorney's filing deputy on an earlier date.

16 **23. Reasonable Doubt Chart:**

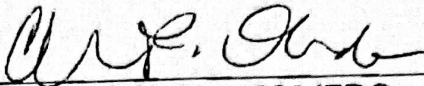
17 Courts have repeatedly cautioned prosecutors from using diagrams or visual aids to elucidate
18 the concept of proof beyond a reasonable doubt. People v. Centeno, (2014) 60 Cal.4th 659. The
19 Centeno court noted that "case law is replete with innovative but ill-fated attempts to explain the
20 reasonable doubt standard." Id.

21 COURT FINDING AND ORDER: The Court AUTHORIZES the use of the reasonable
22 doubt chart with modification. The Court will allow the chart to be displayed once the word
23 "definitely" is removed from appearing directly in front of "reasonable doubt." Nowhere in the
24 reasonable doubt jury instruction does the word "definitely" appear. While the defense may use
25 a chart, it must also accurately state the law and the charge to the jury. Accordingly, the word
26 "definitely" must be removed to comport with the law. In addition, the defense and the People
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1 must submit any demonstrative charts to the Court for approval before their use in argument or
2 any other stage of the trial.

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March 28, 2023


CHARLAINE F. OLMEDO
Judge of the Superior Court

The clerk is to give notice to each party.

