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

PEOPLE OF THE STATE OF
CALIFORNIA,

Petitioner,

v.

Defendant.

CASE #: 25CJCM00654

NOTICE OF MOTION AND
MOTION FOR RELIEF UNDER
RACIAL JUSTICE ACT (PC § 745)

DEPT: 33

DATE: 4/17/25

TO THE HONORABLE JUDGE OF THE SUPERIOR COURT OF LOS ANGELES,
AND TO NATHAN HOCHMAN, DISTRICT ATTORNEY FOR THE COUNTY OF
LOS ANGELES AND/OR HIS REPRESENTATIVE:

Defendant, [REDACTED] by and through his attorneys, hereby moves the Court
for a prima facie finding of racial bias due to the judge in the case exhibiting racial bias or
animus towards the defendant because of the defendant's race, ethnicity, or national origin in
violation of the California Racial Justice Act. [REDACTED] further moves this court, upon

MOTION FOR RELIEF PURSUANT TO PENAL CODE SECTION 745

1 finding that a prima facie showing has been made, to set an evidentiary hearing to
2 determination whether there has been a violation of the California Racial Justice Act (CRJA)
3 and upon a finding of a CRJA violation the defense respectfully requests a remedy.

4 This motion is made based on the Sixth, Eighth and Fourteenth Amendments to the
5 United States Constitution and Article I, sections 7, 15, 16 and 17 of the California
6 Constitution.
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9 Dated this 16th day of April, 2025.

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11 Respectfully submitted,

12 RICARDO D. GARCIA, PUBLIC DEFENDER
13 OF LOS ANGELES COUNTY, CALIFORNIA
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15 By:

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17 _____
18 Jeffrey Martin
19 DEPUTY PUBLIC DEFENDER

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22 Elizabeth Lashley-Haynes
23 DEPUTY PUBLIC DEFENDER
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STATEMENT OF FACTS

Mr. [REDACTED] is a Latino man, who presents with brown skin, was arrested by the Vernon Police Department on December 21, 2024, for one count of Driving Under the Influence in violation of Veh. Code, § 23152(a) and one count of Driving With a .08% Blood Alcohol Content in violation of Veh. Code § 23152(b). On April 16, 2025, [REDACTED] was scheduled for day two of his jury trial in Departments 112 of the Clara Shortridge Foltz Criminal Justice Center, in Los Angeles. On the above date and stated location, Deputy Public Defender Jeffrey A. Martin (hereinafter “DPD Martin”), Deputy District Attorney Willow Rosenthal (hereinafter “DDA Rosenthal”), and the Honorable Laura F. Priver (hereinafter “the Court”) were present in the courtroom.

The Court granted DDA Rosenthal’s second supplemental motion in limine to preclude Defense Expert, Okorie Okorocha, from testifying about his work completed in the case entitled the *Estate of George Floyd vs. the City of Minneapolis*. The Court held that testimony elicited regarding Mr. Okorocha’s involvement in the abovementioned case was prejudicial under CEC § 352 and irrelevant because he testified in a civil case, and not a criminal DUI case.

The case of George Floyd was a high-profile case that involved an African American man who was murdered by a white Minneapolis police officer. Mr. Okorocha is an African American man, who presents with brown skin and is ethnically ambiguous, and can be perceived as Latino. The jury is composed of four African American men and six Latinx persons. Mr. Okorocha testified in said case as an expert witness in the area of toxicology. Similarly, Mr. Okorocha is being proffered as an expert witness in the area of toxicology.

The Court, on its own motion, stated that it will refuse to qualify Mr. Okorocha as an

1 expert witness if asked to be qualified as an expert witness by DPD Martin. The Court
2 reasoned that it would not qualify Mr. Okorocha as an expert because he was not on the list of
3 appointed experts for Los Angeles County. The Court failed provide a legal basis or caselaw
4 to support its reasoning that the LA County approved panel is a sufficient basis for denying a
5 person's designation as an expert. Quite the contrary, it is fairly common for experts to testify
6 and be deemed experts even if they are not on the LA county panel.
7

8 On April 16, 2025, DPD Martin filed an objection to the Court's ruling stating that it is
9 based in animosity towards Mr. Okorocha and is prejudicial and biased. Mr. Okorocha has
10 testified in 55 California courts and 57 U.S. States, as well as on behalf of the federal
11 government of Germany and Japan. He has testified in over 3,500 administrative hearings. He
12 has written several publications. Finally, he has held contracted positions as an analyst and
13 researcher in blood alcohol and blood drug results. The Court overruled the Defense
14 objection.
15

16 The Court permitted the prosecution's witness to be deemed qualified as an expert.
17 However, during cross-examination of the prosecution's Criminalist, Sylors Chem, it became
18 apparent that he was not nearly as qualified as Mr. Okorocha. Mr. Chem testified that he has
19 never taken a course in toxicology or blood alcohol analysis at any accredited university. On
20 the other hand, Mr. Okorocha has taken both toxicology courses and blood alcohol analysis at
21 an accredited university. Mr. Chem admitted that he was unqualified to testify about
22 Standardized Field Sobriety Tests. Upon further probing, Mr. Chem admitted that he has not
23 read leading articles about SFST's and blood analysis. Mr. Okorocha has not only read but
24 has himself written numerous publications regarding SFST's and blood alcohol analysis. Mr.
25 Okorocha is more qualified to testify as an expert Mr. Chem.
26

1 The judge continuously referred to Mr. Okorochoa as a “specialist” despite the amply
2 information before the court that he has previously been qualified as an expert and deemed an
3 expert by numerous courts. The Court was unclear whether or not DPD Martin can use the
4 Jury Instruction for Expert Witnesses and thus, argue in closing summation that Mr.
5 Okorochoa is an expert.

6
7 The following Los Angeles County cases are DUI trials in which Mr. Okorochoa was
8 deemed an expert for closing argument where the defense argued he was an expert witness
9 under the jury instruction:

- 10 1. 24MTCM00176 - Constantino Valladares Ordonez
- 11 2. 24CJCM00777- Elmer Mendez
- 12 3. 24CJCM03163 - Ilene Martinez
- 13 4. 24CJCM04186 - Joan Chorigo
- 14 5. 25CJCM00218 - Christopher Rivera

15
16 Most notably, in 3ES01464 - Nelson Digelman Lopez Mejia, the Honorable Laura F.
17 Priver, deemed Mr. Okorochoa a qualified expert. Mr. Okorochoa has assisted many times in
18 trials for indigent defendants.

19 On April 16, 2024, DPD Martin asked the Court for a hearing so that Mr. Okorochoa,
20 who was present in court and available to testify, could provide additional information to the
21 court pertaining to why he is not currently on the Los Angeles Appointed “Expert’s list”. The
22 Court denied this motion. The Court would not entertain a 403 hearing regarding Mr.
23 Okorochoa’s credentials and expertise to testify as a qualified expert.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. **THE LEGISLATURE ENACTED THE CALIFORNIA RACIAL JUSTICE ACT (CRJA) TO ADDRESS PERVASIVE RACISM AND BIAS IN OUR CRIMINAL LEGAL SYSTEM**

The California State Legislature has committed to “ameliorate bias-based injustice in the courtroom.”¹ The Legislature has acknowledged that all persons possess implicit biases, that these biases impact the criminal justice system and that negative implicit biases tend to disfavor people of color.² Further, it was the intent of the Legislature to eliminate racial bias from California’s criminal justice system because:

[R]acism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California. Implicit bias, although often unintentional and unconscious, may inject racism and unfairness into proceedings similar to intentional bias. The intent of the Legislature is not to punish this type of bias, but rather to remedy the harm to the defendant’s case and to the integrity of the judicial system. **It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.** It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice system are inevitable, and to actively work to eradicate them. (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(i) (emphasis added).)

As such, in 2020, the California Legislature passed Assembly Bill 2542, a groundbreaking provision known as the California Racial Justice Act of 2020 (CRJA).³ Codified in Penal Code Section 745, the CRJA rejects the jurisdictional paradigm created by the United States Supreme Court in *McCleskey v. Kemp* (1987) 481 U.S. 279, which tolerates

¹ (Stats. 2019, ch. 418, § 1(b); Assem. Bill No. 242 (2019-2020 Regular Session).)

² (Stats. 2019, ch. 418, § 1(a)(3)-(4).)

³ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.).)

1 racially disparate outcomes unless an individual defendant can establish that they were the
2 victim of intentional discrimination. (*Id.* at p. 1770.) Emphasizing that the high court in
3 McCleskey accepted such disparities as “inevitable,”⁴ the California Legislature declared: “In
4 California in 2020, we can no longer accept racial discrimination and racial disparities as
5 inevitable in our criminal justice system and we must act to make clear that this
6 discrimination and these disparities are illegal and will not be tolerated in California, both
7 prospectively and retroactively.”⁵

9 The Legislature further recognized the harm from systemic racism, stating that
10 discrimination in the criminal legal system “has a deleterious effect not only on individual
11 criminal defendants but on our system of justice as a whole.”⁶ It explained: “Discrimination
12 undermines public confidence in the fairness of the state’s system of justice and deprives
13 Californians of equal justice under the law.”⁷

15 Specifically, the Legislature declared that new approaches were needed to combat
16 racial discrimination and disparities, stating: “We cannot simply accept the stark reality that
17 race pervades our system of justice. Rather, we must acknowledge and seek to remedy that
18 reality and create a fair system of justice that upholds our democratic ideals.”⁸ Realizing that
19 proof of intentional discrimination was “nearly impossible to establish,” the Legislature
20 rejected jurisprudence that only remedied “racial bias in its most extreme and blatant forms.”⁹

22 In Assembly Bill 2542, the Legislature also focused on creating remedies that would
23 “eliminate racially discriminatory practices in the criminal justice system” and ensure that

25 ⁴ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(f).

26 ⁵ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(g).

27 ⁶ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(a).

⁷ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(a).

⁸ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(b).

⁹ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(c).

1 defendants had full access to the kinds of evidence needed to demonstrate the existence of
2 such disparities.¹⁰ In sum, the findings accompanying AB 2542 powerfully express the
3 Legislature’s desire to identify and ameliorate racism, implicit bias and racial disparities in
4 the criminal legal system, regardless of how they arise.

5 Moreover, Assembly Bill 256 went into effect January 1, 2023. This amended RJA
6 law both expands and clarifies the California Racial Justice Act. Some of the relevant
7 changes are bolded and underlined below:

8
9 (1) At the hearing, evidence may be presented by either party,
10 including, but not limited to, statistical evidence, aggregate data,
11 expert testimony, and the sworn testimony of witnesses. The court
12 may also appoint an independent expert. **For the purpose of a**
13 **motion and hearing under this section, out-of-court statements**
14 **that the court finds trustworthy and reliable, statistical**
15 **evidence, and aggregated data are admissible for the limited**
16 **purpose of determining whether a violation of subdivision (a)**
17 **has occurred.**

18 (2) The defendant shall have the burden of proving a violation of
19 subdivision (a) by a preponderance of the evidence. **The**
20 **defendant does not need to prove intentional discrimination.**
21 (Assem. Bill No. 256 (2021-2022 Reg. Sess.) § 2(c)(1) & (2)
22 (emphasis added).)

23 **II. SECTION 745(a)(2) OF THE CRJA PROHIBITS A JUDGE FROM** 24 **EXHIBITING RACIAL BIAS TOWARDS A DEFENDANT, WHETHER OR** 25 **NOT PURPOSEFUL**

26 The California Racial Justice Act, Section 745, subdivision (a) outlines the types of
27 violations the statute recognizes and the process to address a claim brought under the CRJA.
Subdivision (a)(2) of the Act prohibits bias towards the defendant because of the defendant’s
race, ethnicity, or national origin by specified individuals, outlining a violation where:

(2) During the defendant's trial, in court and during the
proceedings, the judge, an attorney in the case, a law enforcement

¹⁰ (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(j).)

1 officer involved in the case, an expert witness, or juror, used
2 racially discriminatory language about the defendant's race,
3 ethnicity, or national origin, or **otherwise exhibited bias or**
4 **animus towards the defendant** because of the defendant's race,
5 ethnicity, or national origin, **whether or not purposeful**. This
6 paragraph does not apply if the person speaking is describing
7 language used by another that is relevant to the case or if the
8 person speaking is giving a racially neutral and unbiased physical
9 description of the suspect. (§ 745(a)(2) (emphasis added).)

10 The CRJA specifically states that the violation does not need to be purposeful—only
11 that they used racially biased language about the defendant or exhibited racial bias or animus.
12 Here, by the judge exhibited bias toward the expert witness on the case, whom is a person of
13 color, the judge is thus exhibiting bias toward the defendant, who is also a person of color.
14 Because the jury is not explicitly given the race or national origin of people (the expert and
15 the defendant, [REDACTED] they could very likely assume that Mr. Okorochoa and [REDACTED]
16 are the same race. Racial bias or animus toward expert witness Mr. Okorochoa has the same
17 effect as bias or animus toward [REDACTED] Hence, the judge exhibiting bias toward Mr.
18 Okorochoa is both by association exhibiting bias toward [REDACTED] and by default as bias
19 toward Mr. Okorochoa has the effect of negatively impacting [REDACTED]

20 **III. IMPLICIT RACIAL BIAS HERE RESULTED IN THE JUDGE VIEWING A** 21 **LESS QUALIFIED PERSON AS AN EXPERT AND A MORE QUALIFIED** 22 **MAN OF COLOR NOT AN EXPERT**

23 Many studies, such as the Implicit Associations Test (IAT) done by Harvard University
24 “finds that most people have an implicit and unconscious bias against members of traditionally
25 disadvantaged groups.”¹¹ The results of implicit bias testing such as the IAT show that most
26 people, in all professions have implicit bias against African American people. “[I]mplicit bias
27

¹¹ See Christine Jolls & Cass R. Sunstein, The Law of Implicit Bias, 94 CAL. L. REV. 969, 969 (2006).

1 as measured by the IAT has proven to be extremely widespread. Most people tend to prefer
2 white to African American, young to old, and heterosexual to gay.”¹² A study conducted in 2009
3 by law professors from Cornell and Vanderbilt and a federal district court judge in CA examined
4 implicit biases in Judges. “We set out to explore whether judges hold implicit biases to the same
5 extent the general population and to determine whether those biases correlate with their decision
6 making in court. Our results are both alarming and heartening: (1) Judges hold implicit racial
7 biases. (2) These biases can influence their judgment. (3) Judges can, at least in some instances,
8 compensate for their implicit biases.”

10 Here, Judge Priver exhibited implicit racial bias by both trying to exclude our expert from
11 even mentioning a previous trial where he served as an expert because that trial involved a topic
12 that has general knowledge in society that it is about a white officers killing an unarmed Black
13 man, George Floyd. Moreover, rather than simply ruling that this information was to not come
14 in, Judge Priver denied that Mr. Okorocha was even an expert in the field of toxicology and
15 prevented defense counsel from introducing him as an expert to the jury or refusing to let defense
16 counsel refer to him as an expert. While a less qualified, non-Black expert by the prosecution,
17 was deemed an expert in toxicology.

19
20 **IV. [REDACTED] HAS MADE A PRIMA FACIE SHOWING UNDER SECTION**
21 **745 AND IS ENTITLED TO A HEARING**

22 A defendant is entitled to a hearing if he can make a prima facie showing that the
23 CRJA has been violated. Section 745, subdivision (h)(2) makes this a straightforward
24 showing: “‘Prima facie showing’ means that the defendant produces facts that, if true,
25 establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For
26

27 ¹² See Christine Jolls & Cass R. Sunstein, The Law of Implicit Bias, 94 CAL. L. REV. 969, 971 (2006).

1 purposes of this section, a ‘substantial likelihood’ requires more than a mere possibility, but
2 less than a standard of more likely than not.” Once a defendant makes a prima facie showing,
3 the court must hold a hearing at which the defendant must show the violation occurred by a
4 preponderance of the evidence. (§ 745(c).)

5 in *Finley v. Superior Court* (2023) 95 Cal.App.5th 12 [312 Cal.Rptr.3d. 907], the
6 Court detailed what the prima facie standard in CRJA cases is and provided guidance for how
7 courts should engage in such an analysis. The appellate court explained that the prima facie
8 standard for CRJA analysis, while similar to the prima facie standard for habeas proceedings,
9 is actually less stringent:

11 “Under the Racial Justice Act the court does not ask if the
12 defendant proffered facts sufficient to demonstrate actual
13 entitlement to relief. Rather, the court asks **if a defendant has**
14 **proffered facts sufficient to show a ‘substantial likelihood’**
15 **defined as ‘more than a mere possibility, but less than a**
16 **standard of more likely than not’** that the Racial Justice Act has
17 been violated. (§745, Subd. (h)(2).) The prima face threshold is
18 thus lower than the preponderance of the evidence standard
19 required to establish an actual violation of the Racial Justice Act.
20 (§ 745, Subd. (a).)” (*Finley*, at p. 11 (emphasis added).)

21 In further solidifying the notion that the prima facie showing for CRJA is not supposed to be
22 a high standard for the defense, the court stated, “imposing a ‘heavy burden’ at the prima
23 facie stage in a Racial Justice Act case would be contrary to the Act’s structure and purpose.”
24 (*Finley*, at p. 11.)

25 The Court of Appeal states that a court should not engage in a balancing of what the
26 defense proffers and how the prosecution responds or rebuts that proffer, but rather, “accept
27 the truth of the defendant’s allegations...unless the allegations are conclusory, unsupported
by the evidence presented in support of the claim or demonstrably contradicted by the court’s
own records.” (*Finley*, 95 Cal.App.5th at p. 13.) The appellate court in *Finley* also cautions

1 that a court, “should not weigh the evidence or make credibility determinations, except in a
2 rare case where the record ‘irrefutably establishes’ that a defendant’s allegations are false.

3 (*People v. Harden, supra*, 81 Cal.App.5th at p. 56).” (*Id.* at p. 14.)

4 Here, [REDACTED] has sufficiently shown that Judge in this case has shown implicit
5 racial bias or animus toward [REDACTED] in this case by not allowing an expert witness for the
6 defense, an African American man, testify as an expert for the defense. The court refuses to
7 qualify him as an expert despite abundant and ample evidence that he is an expert witness in
8 the field of toxicology. As is important for laying the foundation for his expertise, Mr.
9 Okorochoa needs to explain his background, training and experience to the jury as the fact
10 finder and determiner of credibility and knowledge of expert witnesses. The judge’s decision
11 to exclude part of Mr. Okorochoa’s background that includes working as expert on the civil
12 trial concerning the murder of George Floyd. Excluding this part of his background and
13 experience is based on explicit racial bias and/or animus.

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15
16 **V. IF [REDACTED] PREVAILS AT A HEARING BY A PREPONDERANCE**
17 **OF THE EVIDENCE, HE IS ENTITLED TO RELIEF**

18 As previously stated, a defendant who makes a prima facie showing of a violation of
19 the CJRA is entitled to a hearing. (Pen. Code, § 745, subd. (c).) At this hearing, “evidence
20 may be presented by either party, including, but not limited to, statistical evidence, aggregate
21 data, expert testimony, and the sworn testimony of witnesses.” The defendant bears the
22 burden of proving a violation of section 745, subdivision (a) by a preponderance of the
23 evidence. (Pen. Code, § 745, subd. (c).)

24 The defense contends that [REDACTED] has made the required prima facie showing in
25 this motion, and as such the court should grant an evidentiary hearing. At such hearing the
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1 defense contends that it will make the required showing that there has in fact been a violation
2 of the CA Racial Justice Act and that [REDACTED] is entitled to relief. Per Section 745,
3 subdivision (e), potential remedies include:

4 (1) Before a judgment has been entered, the court may impose any
5 of the following remedies:

6 (A) Declare a mistrial, if requested the by defendant.

7 (B) Discharge the jury panel and empanel a new jury.

8 (C) If the court determines that it would be in the interest of
9 justice, dismiss enhancements, special circumstances, or special
10 allegations, or reduce one or more charges.

11 [...]

12 (4) The remedies available under this section do not foreclose any
13 other remedies available under the United States Constitution, the
14 California Constitution, or any other law. (§ 745, subd. (e).)

15 Because [REDACTED] has made the required prima facie showing in this motion, we
16 respectfully request that the Court grant an evidentiary hearing. Should [REDACTED]
17 demonstrate a violation of section 745, subdivision (a)(2) by a preponderance of the evidence,
18 he is entitled to a new trial or “any other remedies available under the United States
19 Constitution, the California Constitution or any other law.” (Pen. Code § 745, subd. (e)(4).
20

21 CONCLUSION

22 For the reasons set forth above, counsel submits that a prima facie showing of racial
23 bias has been met and, therefore, requests a hearing on whether a violation of the Racial
24 Justice Act has occurred and if such is proven, counsel requests that it (1) Mr. Okorocho be
25 permitted to testify about his involvement in the *Estate of George Floyd* and (2) be able to
26 testify as a qualified expert.
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1 Respectfully submitted,

2 RICARDO D. GARCIA, PUBLIC DEFENDER
3 OF LOS ANGELES COUNTY
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6 _____
7 Jeffrey A. Martin
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