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

In re

SCOTT LEE PETERSON

On Habeas Corpus.

Case No. SC055500A

CAPITAL CASE

Related to: California Supreme Court No.
S230782 (on habeas corpus) and No. S132449
(on direct appeal).

**DENIAL TO RETURN TO ORDER TO
SHOW CAUSE**

Hon. Anne-Christine Massullo
San Francisco Superior Court Judge, Sitting
by Designation in San Mateo Superior Court

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1 **DENIAL TO RETURN TO ORDER TO SHOW CAUSE**

2 TO THE HONORABLE ANNE-CHRISTINE MASSULLO, SAN FRANCISCO
3 SUPERIOR COURT JUDGE SITTING AS SAN MATEO COUNTY SUPERIOR
4 COURT JUDGE:

5 By this verified Denial to Return to Order to Show Cause and Memorandum of
6 Points and Authorities in Support thereof, petitioner Scott Lee Peterson, through counsel
7 responds to the Return to the Order to Show Cause (Return).

8 **INTRODUCTION**

9 Petitioner Scott Peterson was convicted of capital murder in connection with the
10 death of his wife, Laci Peterson, and their unborn son, Conner. Mr. Peterson appealed in
11 the California Supreme Court and filed a contemporaneous Petition for Writ of Habeas
12 Corpus (Petition). The first claim in the habeas petition alleged that juror 7 committed
13 misconduct in providing materially false information during the jury selection process.

14 In his Petition, Mr. Peterson detailed the nature of the false information.
15 Questions 54a and 54b of the jury questionnaire asked if prospective jurors had ever been
16 “involved in a lawsuit (other than divorce proceedings)” and, if so, whether they were the
17 plaintiff or defendant. (Petition at p. 97.) Question 72 asked if prospective jurors had
18 ever “participated in a trial as a party, witness or interested observer?” (Petition at p. 98.)
19 And question 74 asked if prospective jurors or their family or close friends had ever been
20 “the victim or witness to any crime.” (Petition at p. 98.) Seated juror 7 answered “no” to
21 questions 54a, 72 and 74, and left question 54b blank. (Petition at p. 98.)

22 Exhibit 45 filed in support of the Petition shows that all these answers were false.
23 In November of 2000, juror 7 – who was four and a half months pregnant at the time –
24 filed a lawsuit against Marcella Kinsey. Juror 7 alleged that because of Ms. Kinsey’s
25 conduct she (juror 7) “fears for her unborn child.” (Ex. 45 at p. HCP-000908.)¹ Juror 7

26
27 ¹ All references to Petition Exhibits are “Ex.,” references to the Respondent’s
28 Return Exhibits are “Return Ex,” and references to the exhibits attached to this Denial are
“Den. Ex.”

1 alleged that Ms. Kinsey “committed acts of violence against her” and “would try to hurt
2 the baby.” (Ex. 45 at p. HCP-000905.) And at the ensuing Superior Court hearing held in
3 connection with her lawsuit, juror 7 testified under oath and obtained a restraining order
4 against Ms. Kinsey. (Ex. 45 at pp. HCP-000912-914.)

5 In short, the documents show: (1) juror 7 had been involved in a lawsuit; (2) she
6 was the plaintiff; (3) she participated in the lawsuit as both a party and a witness; and (4)
7 she was both the victim of, and a witness to, a crime. The documentary evidence
8 therefore demonstrates that juror 7’s answers on the questionnaire were false. Based on
9 these facts, Mr. Peterson alleged in his habeas petition that juror 7 had committed
10 misconduct which raised a presumption of prejudice.

11 With the Petition and this documentary proffer before it, the Supreme Court
12 ordered respondent to file an Informal Response to the habeas petition. Respondent did
13 so in 2017. In this Informal Response, respondent recognized that juror 7’s lawsuit
14 against Ms. Kinsey was indeed a lawsuit. (Informal Response (IR) at p. 27.)
15 Nevertheless, respondent urged the Supreme Court to summarily deny the
16 petition without issuing an order to show cause. Although it did not provide a declaration
17 from juror 7, respondent offered various explanations for juror 7’s false answers to
18 questions 54, 72 and 74.

19 As to Question 54 (involvement in a lawsuit), respondent offered a “money or
20 property” explanation to defend juror 7’s answer. Respondent argued that juror 7 must
21 not have understood that her lawsuit against Ms. Kinsey was a lawsuit, because the word
22 “lawsuit” “could reasonably be understood as an action in which one person sues another
23 for money [or] property.” (IR at pp. 27-28.) As to Question 72 (testify as a witness),
24 respondent offered a “criminal action” explanation to defend juror 7’s answer. Ignoring
25 documentation showing juror 7 testified under oath against Ms. Kinsey at trial on the
26 restraining order, respondent instead argued there was no showing juror 7 ever testified
27 against Ms. Kinsey in a *criminal action*:

28 Peterson includes no documentation proving Juror No. 7’s involvement in

1 a related criminal trial in Santa Clara County... Peterson has not shown
2 that Ms. Kinsey's conviction for vandalism ... [was] obtained by way of a
3 trial which involved Juror No. 7.

4 (IR at p. 29.) Finally, as to Question 74 (victim or witness to any crime), respondent
5 offered a "harassment is not a crime" explanation to defend juror 7's denial. In
6 respondent's view, juror 7 did not falsely deny that she had been the victim of a crime
7 because there was no evidence to show she "would have understood Ms. Kinsey's
8 harassment to be a crime." (IR at p. 29.)

9 After more than three years of consideration, the Supreme Court rejected
10 respondent's arguments by unanimously issuing an Order to Show Cause on the juror
11 misconduct claim. This order required respondent to show cause why relief should not
12 be granted because juror 7 failed to "disclos[e] her prior involvement with other legal
13 proceedings, including but not limited to being the victim of a crime, as alleged in Claim
14 1." (*In re Peterson*, S230782, Order of October 14, 2020.)

15 Respondent has now filed its Return. In support of that Return respondent
16 recycles the very same arguments it offered in its Informal Response, but this time
17 provides a declaration from juror 7. Respondent explains that because juror 7 is
18 "represented by counsel . . . the People have not been able to question her *directly* . . ."
19 (Return at p. 51, emphasis added.) It appears, however, that respondent has been able to
20 effectively question juror 7 "indirectly" and, remarkably enough, juror 7's current
21 explanations for her answers to questions 54, 72 and 74 match up almost word-for-word
22 with the positions respondent took in its 2017 Informal Response, long before juror 7
23 signed her declaration. Fairly read, the similarities are uncanny.

24 As to Question 54, in her declaration juror 7 offers the precise "money or
25 property" explanation originally offered by respondent in 2017:

26 I understood the word "lawsuit" to mean and refer to a suit for money or
27 property.

28 (Return, Ex. 1 at ¶ 10.) As to Question 72, juror 7 offers the precise "criminal action"

1 explanation originally offered by respondent in 2017:

2 I did not testify against [Ms. Kinsey] in any criminal action and cannot
3 state with any level of certainty whether her actions resulted in any
4 conviction.

5 (Return, Ex. 1 at ¶ 22.) And as to Question 74, juror 7 offers the precise “harassment is
6 not a crime” explanation originally offered by respondent in 2017:

7 I did not interpret the circumstances leading to the petition for a
8 restraining order as a crime. I still do not.

9 Minor indignities . . . do not stick out to me, let alone cause me to feel
10 “victimized” the way the law might define that term.

11 (Return, Ex. 1 at ¶¶ 23-24.)²

12 Relying on juror 7’s declaration, respondent now formally reiterates the very
13 same position it took years ago in its Informal Response. This Denial follows.

14 For the most part, this Denial will serve the traditional functions of a Denial to (1)
15 re-allege the factual allegations of the Petition and (2) admit or deny the new factual
16 allegations contained in respondent’s Return. In addition, in order to give a clear picture
17 of what factual disputes remain for an evidentiary hearing, this Denial will specify those
18 factual allegations which respondent has admitted, those facts deemed admitted by
19 operation of law, and those facts which it has denied.

20 But, because of a most unusual feature of this case, the Denial will serve one other
21 function as well. As noted above, the Supreme Court issued an Order to Show Cause to
22 address whether juror 7 failed to “disclos[e] her prior involvement with other legal

23 ² It is worth noting that when filling out her sworn complaint seeking a restraining
24 order against Ms. Kinsey back in 2000 – under penalty of perjury – juror 7 did not
25 characterize Kinsey’s conduct as a “minor indignity.” Far from it. As discussed more
26 fully in Mr. Peterson’s accompanying Memorandum of Points and Authorities, juror 7
27 alleged that Ms. Kinsey “threatened to commit acts of violence against” her. (Ex. 45 at p.
28 HCP-000905.) She alleged that Kinsey had “committed acts of violence against” her.
(*Ibid.*) And she alleged that she “really fears for her unborn child.” (Ex. 45 at p. HCP-
000908.) Juror 7 certainly did not paint a picture of “minor indignities” when she sought
(and obtained) the restraining order.

proceedings, including but not limited to being the victim of a crime, as alleged in Claim 1.” In its Return, respondent provides documentation showing that juror 7 was *both a witness to, and the victim of, yet another crime that she concealed during voir dire*. Respondent now concedes that juror 7’s ex-boyfriend was charged with domestic violence against juror 7 and pled no contest to battery. (Return at pp. 51-53.) This disclosure has resulted in new investigation on Mr. Peterson’s part in connection with the identical jury misconduct claim on which the Order to Show Cause was issued. That new investigation has itself resulted in additional factual allegations – presented in section I of this Denial – directly relevant to the existing misconduct claim. Respondent should be ordered to admit or deny these additional factual allegations.

With that explanation in mind, this Denial is divided into four sections. Section I will detail new factual allegations premised on the discovery that juror 7 was a witness to, and the victim of, yet another crime which she did not reveal during voir dire – a 2001 battery. These are new factual allegations directly supporting Mr. Peterson’s misconduct claim and which respondent should be required to admit or deny. Section II will address the existing juror misconduct claim and will set forth those factual allegations of the Petition which respondent has explicitly admitted, those which are deemed admitted by operation of law, and those which have been denied. Section III will address those additional factual allegations respondent has made outside the context of admitting or denying the factual allegations from the Petition which support the misconduct claim. Finally, section IV will formally re-incorporate each of the factual allegations of the Petition.

As discussed more fully in the accompanying Memorandum of Points and Authorities, and despite respondent’s many admissions, there remain numerous material facts in dispute. An evidentiary hearing is therefore required. At that point, the matter can be fully briefed.

**I. PETITIONER'S NEW FACTUAL ALLEGATIONS BASED ON
EVIDENCE RESPONDENT REVEALED IN ITS RETURN**

As noted above, question 74 on the jury questionnaire asked juror 7 if she or her family or close friends had ever “been the victim or witness to any crime.” (Petition at p. 98.) Seated juror 7 answered “no.” (Petition at p. 98.) The Supreme Court has now ordered respondent to show cause why relief should not be granted because juror 7 failed to “disclos[e] her prior involvement with other legal proceedings, including but not limited to being the victim of a crime, as alleged in Claim 1.” (*In re Peterson*, S230782, Order of October 14, 2020.)

The following factual allegations in support of this claim are based on (1) material referenced on pages 51-53 in respondent’s Return to Petition for Writ of Habeas Corpus, (2) material attached as Exhibit 2 to respondent’s Return and (3) subsequent investigation:

1. In November 2001, juror 7 was living with Eddie Whiteside.
2. In November 2001, juror 7 was dating Eddie Whiteside.
3. On November 2, 2001, Eddie Whiteside was arrested and charged in San Mateo Superior Court with (1) corporal injury on a spouse/cohabitant, a violation of Penal Code section 273.5, subdivision (a); (2) battery against a spouse, cohabitant, girlfriend, or former spouse or girlfriend in violation of Penal Code section 243, subdivision (e); (3) false imprisonment in violation of Penal Code section 236 (4) cruelty to a child in violation of Penal Code section 273A, subdivision (b); and (5) battery in violation of Penal Code section 242. (See Return, Ex. 2 at pp. 2020_00023-00024.)
4. These offenses were alleged to have occurred on November 2, 2001. (*Ibid.*)
5. On December 11, 2001, defendant Whiteside was ordered not to “annoy, harass, strike, threaten, sexually assault, batter, [or] stalk . . . the protected persons named below” and not to come “within 100 yards of the protected persons named below.” (*Id.* at pp. 2020_00029-00030.)

1 6. Juror 7 and “Baby Doe” were the protected persons. (*Id.* at p. 2020_00030;
2 2020_00054.)

3 7. On January 2, 2002, defendant Whiteside pled no contest to battery (count 5). (*Id.*
4 at p. 2020_00032.)

5 8. On January 2, 2002, defendant Whiteside was ordered to “complete at least 104
6 hours of domestic violence counseling within 12 months.” (*Id.* at p. 2020_00034.)

7 9. On January 2, 2002, defendant Whiteside was again ordered not to have contact
8 with or come within 100 yards of “the protected persons named below” (Juror 7 and
9 “Baby Doe”). (*Id.* at p. 2020_00036-00037.)

10 10. On January 23, 2002, defendant Whiteside presented the Superior Court with
11 “proof of enrollment in domestic violence batterers’ treatment program.” (*Id.* at p.
12 2020_00039.)

13 11. On June 27, 2002, juror 7 gave birth to a child. (Den. Ex. 1 at p. 3.) This child
14 was born 237 days after the November 2, 2001 incidents of domestic violence were
15 perpetrated against juror 7 and “Baby Doe.” Counsel for Mr. Peterson are informed and
16 believe that juror 7 was pregnant at the time of the assaults. (See National Institutes of
17 Health, *About Pregnancy*
18 (<https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo>) (last updated June 18,
19 2021) [pregnancy usually lasts about forty weeks or 280 days].) Counsel for Mr.
20 Peterson further are informed and believe that sometime between when juror 7 became
21 pregnant in 2001 and the birth of that child in 2002, but before she filled out the
22 questionnaire for Mr. Peterson’s trial on March 9, 2004, juror 7 became aware that she
23 had been pregnant at the time of the domestic violence assaults.

24 12. At 1:39 in the afternoon of October 21, 2020, Modesto Detective Craig Grogan
25 sent an email to San Mateo District Attorney Senior Inspector Bill Massey. Mr. Grogan
26 asked Mr. Massey to “[p]lease see what you can find on the DV case involving
27
28

Whiteside. *I need to determine who the victim is.*” (Return, Ex. 2 at p. 2020_00015-00016 (emphasis added).)

13. Later that same day Senior Inspector Massey replied with an East Palo Alto Police Department “case display record” confirming that juror 7 was “the ‘confidential victim’ in the arrest of Whiteside in 2001.”

14. Juror 7 was, in fact, the adult victim in the charges against Whiteside in *People v. Whiteside*, SM315961A.

15. Question 74 in the jury questionnaire asked “[h]ave you, or any member of your family, or close friends, ever been the VICTIM or WITNESS to any crime.”

16. Juror 7 selected “No.”

17. Counsel for Mr. Peterson believe that on July 21, 2001, juror 7 was the victim and/or the witness to a crime when Ms. Kinsey violated the temporary restraining order juror 7 had obtained against Ms. Kinsey. (Return, Ex. 2 at p. 2020_00017.)

18. Juror 7 did not disclose that she was the victim or a witness to the July 21, 2001 violation of the TRO.

19. By concealing these relevant facts during voir dire and giving false answers on her questionnaire, juror 7 undermined the jury selection process, impairing Mr. Peterson’s ability to exercise for-cause and peremptory challenges. This constitutes juror misconduct.

II. FACTS RESPONDENT HAS ADMITTED AND DISPUTED IN CONNECTION WITH THE JUROR MISCONDUCT CLAIM

As noted above, the sole question for this Court’s resolution is whether juror 7 failed to “disclos[e] her prior involvement with other legal proceedings, including but not limited to being the victim of a crime, as alleged in Claim 1.” (*In re Peterson*, S230782, Order of October 14, 2020.) After all, Mr. Peterson was entitled to be tried by a jury of 12 impartial jurors, not 11.

Mr. Peterson has described the claim above. In brief, he alleged in his Petition

1 that juror 7 gave false answers to four questions on the jury questionnaire:

- 2 • Question 54a (asking if she had been “involved in a lawsuit (other than divorce
3 proceedings)”);
- 4 • Question 54b (asking if she was the plaintiff or defendant);
- 5 • Question 72 (asking if she had ever “participated in a trial as a party, witness or
6 interested observer”); and
- 7 • Question 74 (asking if she had ever been the victim of, or witness to, a crime).

8 (Petition at p. 98.) Juror 7 answered “no” to questions 54a, 72 and 74, and left 54b blank.

9 To support his claim, Mr. Peterson presented 35 specific factual allegations, set
10 forth in the Petition under Claim One, paragraphs 4-38, at pages 97-108. Respondent
11 admits or denies these allegations as follows.³

12 **A. Factual Allegations Respondent Has Admitted**

13 In its Return, respondent now admits the factual allegations contained in
14 paragraphs 4, 5, 6, 7, 8, 9, 10, 14 (parts) and 24 (parts). Because these facts have been
15 admitted, they are no longer in dispute, and respondent must accept them for purposes of
16 the evidentiary hearing.

17 **B. Factual Allegations Deemed Admitted by Operation of Law**

18 Allegation 13 of the Petition, relating to juror 7’s November 2000 lawsuit against
19 Marcella Kinsey asking for an injunction, reprints the allegations contained in that
20 lawsuit. (Compare Petition at pp. 99-100 [paragraph 13] with Ex. 45 at p. HCP-000907-
21 909 [allegations of lawsuit].) In its Return, respondent neither admits nor denies these
22 factual allegations but instead makes the purely legal argument that “the document speaks
23 for itself.” (Return at pp. 25-26.)

24 Similarly, allegation 36 of the Petition alleges that trial counsel for Mr. Peterson
25

26 ³ The juror misconduct claim is actually supported by 41 numbered paragraphs of
27 allegations. (Petition at pp. 96-108.) But as respondent correctly notes, a number of
28 these paragraphs are not factual allegations, but statements of law. The factual
allegations underlying the claim are contained in paragraphs 4-38.

1 reviewed juror 7's written questionnaire and recalled that she said she had never been the
2 victim of a crime, had never been involved in a lawsuit and never participated in a trial as
3 a witness or participant. (Petition at p. 107.) Here too respondent does not provide a
4 factual response to the allegation but instead denies the allegation because trial counsel's
5 declaration "speaks for itself." (Return at pp. 25-26.)

6 Whether documents can actually speak for themselves is beside the point and has
7 nothing to do with the pleading stage of a habeas proceeding. Evidentiary objections to
8 evidence may certainly be raised if and when that evidence is introduced at an evidentiary
9 hearing. But neither case law nor court rules permit this kind of end run around the
10 specific obligation to respond to the factual allegations of a verified petition. To the
11 contrary, when (as here) a verified petition has been filed, and an Order to Show Cause
12 has issued, the "factual allegations of a return must . . . respond to the allegations of the
13 petition" by "stating facts." (*People v. Duvall* (1995) 9 Cal.4th 464, 476.) California
14 Rule of Court 4.551, subdivision (d) reflects this view, providing that "[a]ny material
15 allegation of the petition not controverted by the return is deemed admitted for purposes
16 of the proceeding." Thus, when respondent does not specifically deny a factual
17 allegation made in a habeas petition, that allegation is deemed admitted. (See *In re*
18 *Fratus* (2012) 204 Cal.App.4th 1339, 1351.) Having elected not to present facts to
19 dispute factual allegations 13 and 36 – but only evidentiary objections – these facts are
20 deemed admitted under Rule 4.551.⁴

21 Paragraph 16 of the Petition alleged as follows:

22 During the jury selection process, including in her jury questionnaire
23 (Exh. 44), and oral voir dire, which appears at Exhibit 46 [Voir Dire of
24 (juror 7)], [juror 7] failed to disclose that she and her boyfriend had been
25 [1] victims and [2] witnesses of Marcella's crimes against [juror 7] and
her unborn child.

26 ⁴ At the beginning of its Return, the state adds a boilerplate general denial stating
27 that "except as expressly stated" all factual allegations of the Petition are denied. (Return
28 at p. 7.) Because a general denial is entirely impermissible in a habeas case, this
allegation has no effect. (*Duvall*, supra, 9 Cal.4th at pp. 479-483.)

1 In its Return, respondent (1) denies that juror 7 failed to disclose that she had been the
2 victim of a crime (allegation [1] in the above quote) but (2) does not address whether she
3 failed to disclose that she had been a *witness* to Ms. Kinsey's crimes [allegation [2] in the
4 above quote). Pursuant to Rule 4.551, juror 7's failure to disclose that she had been a
5 witness to Ms. Kinsey's crimes is therefore deemed admitted by operation of law.

6 In allegations 20 and 21 Mr. Peterson alleged as follows:

7 The extremely lengthy trial imposed a financial hardship on [juror 7].
8 During the trial she was forced to borrow money from a fellow juror, who
9 loaned her \$1000. The juror who loaned [juror 7] the \$1000 made a gift
of it to her and told her that she did not have to repay it.

10 In its Return, respondent denies these allegations, respectively, as "irrelevant to the
11 question before this court" and "not relevant." (Return at pp. 29-30.) Similarly,
12 respondent makes multiple evidentiary objections to the declarations of other jurors
13 submitted by Mr. Peterson as exhibits 50 and 51 to the Petition. (Return at pp. 69-79
14 [objecting to various statements in those declarations as irrelevant, lacking in foundation,
15 improper opinion, hearsay, juror mental process, speculation, vague, and overbroad].)

16 But as noted above, the pleading stage of a habeas case is not the place to make
17 evidentiary objections. Instead, the Return must "respond to the allegations of the
18 petition" by "stating facts." (*Duvall, supra*, 9 Cal.4th at p. 476.) To the extent
19 respondent believes a petitioner's specific factual allegation in a verified petition is
20 inadmissible, the proper response is to admit or deny the fact and then object to the
21 admissibility of the fact. Respondent itself took this approach in connection with other
22 factual allegations. (See, e.g., Return at p. 31 [denying factual allegation 24 and making
23 a separate argument as to admissibility].) Because respondent did not respond to
24 allegations 20 and 21 with facts, and pursuant to Rule 4.551, these allegations are deemed
25 admitted by operation of law. If respondent genuinely believes these facts are irrelevant,
26 it remains free to make that legal argument in any post-hearing briefing.

27 In allegation 24 Mr. Peterson alleged as follows:

28 [1] [Juror 7's] bias, based on her own victimization as a woman whose

1 unborn child was threatened by another, was confirmed during
2 deliberations. [2] Ten jurors voted to convict Mr. Peterson of second
3 degree murder of the unborn child. [3] [Juror 7] was a holdout juror, who
4 strenuously argued that the killing of the unborn child was first degree
5 murder. (Exh. 8 at HCP- 000238.) [4] During deliberations, [Juror 7]
6 passionately, and personally, argued to her fellow-jurors, “How can you
7 not kill the baby?, [Juror 7] said, pointing to her stomach.” (*Ibid.*) [5] As
8 the jurors recounted the deliberations, “The issue of fetus versus a living
9 child also came into play for some jurors, but not for [Juror 7]. [6] “That
10 was no fetus, that was a child,’ [Juror 7] said. ‘Everyone heard I referred
11 to him as ‘Little Man.’ If he could have been born, he would have
12 survived. It’s unfair. He didn’t give that baby a chance.’” (*Ibid.*)

13 This allegation was based on quotes taken from a book juror 7 co-authored with other
14 jurors. In its Return, respondent admits that juror 7 was one of two holdouts for first
15 degree murder in connection with Conner – allegations [2] and [3] in the above
16 paragraph. (Return at p. 31.) Respondent then denies the remaining allegations, claiming
17 that juror 7 was not biased. (Return at p. 31.) But respondent neither admits nor denies
18 the specific statements attributed to juror 7 in allegations [4], [5], and [6] in the above
19 paragraph. Pursuant to Rule 4.551, these specific allegations as to what juror 7 said
20 during deliberations are deemed admitted by operation of law.⁵

21 **C. Factual Allegations Respondent Denies**

22 Respondent denies the factual allegations contained in paragraphs 11, 12, 14, 15,
23 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38. Eight of these 23
24 denials are entirely semantic and do not place material facts at issue. There is no need to
25 waste scarce judicial and court resources with further litigation as to these allegations.
26 The remaining 15 denials create genuine disputed issues of material fact necessitating an
27 evidentiary hearing.

28 ⁵ Respondent argues that this evidence is inadmissible pursuant to Evidence Code
section 1150. (Return at p. 31.) Respondent is free to make that argument at any hearing
when this evidence is introduced – as noted above, the pleading stage of a habeas action
is not the place to lodge or rule on evidentiary objections.

1 **1. Purely Semantic Denials**

2 In factual allegation 12, Mr. Peterson alleged as follows:

3 Case files obtained from the San Mateo Superior Court disclose that on
4 November 27, 2000, [juror 7] filed a lawsuit, entitled “Petition for
5 Injunction Prohibiting Harassment” against one, Marcella Kinsey. (Exh.
6 45 [*Juror 7 v. Marcella Kinsey*, San Mateo Superior Court No. 415040,
7 filed Nov. 27, 2000].)

8 In its Return, respondent denies this allegation, explaining that the lawsuit brought by
9 juror 7 “was not titled a lawsuit” but “[a]s petitioner acknowledges, it was entitled
10 ‘Petition for Injunction Prohibiting Harassment.’” (Return at p. 24.) Semantics aside,
11 there is no dispute that juror 7 did indeed sue Ms. Kinsey on November 27, 2000, to
12 obtain an injunction.

13 In factual allegation 14, Mr. Peterson alleged as follows:

14 Following an evidentiary hearing at which both [juror 7] and defendant
15 Marcella were sworn and testified, the superior court entered an order
16 prohibiting Marcella Kinsey from harassing both [juror 7] and her unborn
17 child for a period of three years. (*Id.* at HCP-000914.)

18 In its Return, respondent “admit[s] some portions of this [allegation] and den[ies] others,”
19 explaining that the hearing at which both juror 7 and Kinsey testified to provide evidence
20 for the court was a “‘hearing,’ not an evidentiary hearing.” (Return at p. 27.) Semantics
21 aside there is no dispute that juror 7 did indeed testify during her lawsuit against Kinsey.

22 In factual allegations 27, 28, 29, 30, 31 and 32, Mr. Peterson alleged specific
23 statements juror 7 made in her letters to Mr. Peterson, attaching those letters as exhibits
24 to the Petition. In its Return, respondent denies all these factual allegations, providing its
25 explanations for what the letters really mean in its view. (Return at pp. 32-35.)

26 With all due respect, these types of denials should have no place in the habeas
27 pleading process. And these denials are all the more puzzling because in respondent’s
28 Memorandum of Points and Authorities, it admits that juror 7 wrote letters to Mr.
29 Peterson. (Return at p. 41.) On this issue, Mr. Peterson will be brief: the purpose of the

1 pleadings in a habeas case is to narrow the factual issues in dispute so that all parties and
2 the Court are aware of what genuinely needs to be litigated at the evidentiary hearing.
3 Here, respondent does not dispute that (1) juror 7 wrote these letters and (2) the letters
4 say what the letters say. Respondent's current interpretation of what the letters *mean*
5 may be appropriate in post-hearing briefing, but scarce court time and judicial resources
6 should not have to be spent on determining whether, in fact, juror 7 wrote the letters.
7 Respondent's denial is purely semantic and should be deemed an admission of Mr.
8 Peterson's allegations.

9 **2. Denials of a Material Fact**

10 In allegation 11 Mr. Peterson alleged that juror 7's answers to questions 54a, 54b,
11 72 and 74 were all false. Respondent denies this allegation, explaining that the answers
12 were based on juror 7's "understanding of the terms used." (Return at p. 24.) Thus,
13 whether these answers were true or false is plainly a material, disputed fact.

14 In allegation 15 Mr. Peterson alleged as follows:

15 Further, as a result of her malicious conduct against [juror 7], Ms. Kinsey
16 was convicted of the crime of vandalism and was sentenced to a week in
17 county jail. (HCP-000916.)

18 Respondent admits that Ms. Kinsey was convicted of vandalism. (Return at p. 27.) But
19 respondent alleges that it was Mr. Whiteside who was the victim of the vandalism
20 because it was "his tires" that were slashed. (Return at p. 27; but see Ex. 45 at p. HCP-
21 000909 [Juror 7 swears under oath that Ms. Kinsey "kicked in the front door to [juror 7's]
22 house."].) Although the question of who was the victim of Ms. Kinsey's vandalism is
23 now a plainly disputed fact, it may not in the end be material. Question 74 asked juror 7
24 if she had ever been the victim of, *or a witness to*, a crime. Regardless of whether she
25 was the victim of the vandalism of which Ms. Kinsey was convicted, respondent does not
26 dispute that she was a witness to (1) Ms. Kinsey's threatening and assaultive conduct as
27 to juror 7 herself (which formed the basis of the lawsuit seeking an injunction) and (2)

1 Ms. Kinsey's vandalism, no matter who the victim was.

2 In allegation 16, Mr. Peterson alleged as follows:

3 During the jury selection process, including in her July questionnaire
4 (Exh. 44), and oral voir dire, which appears at Exhibit 46 [Voir Dire of
5 [juror 7]], [juror 7] failed to disclose that she and her boyfriend had been
6 victims and witnesses of Marcella's crimes against [juror 7] and her
unborn child.

7 As noted above, in its Return, respondent denies that juror 7 failed to disclose that she
8 had been the victim of a crime, explaining that (1) Mr. Whiteside was the victim of Ms.
9 Kinsey's vandalism, (2) Mr. Whiteside was not "family or a close friend" and (3) juror 7
10 never considered herself a victim. (Return at p. 28.) Thus, respondent does not dispute
11 that juror 7 failed to disclose she had been the victim of a crime. Instead, respondent
12 disputes whether she was required to do so.

13 In allegation 17, Mr. Peterson alleged as follows:

14 During the jury selection process, including in her jury questionnaire and
15 oral voir dire, [juror 7] failed to disclose that she had filed a lawsuit
16 against Marcella to prevent Marcella from harming [juror 7] and her
unborn child.

17 In its Return, respondent denies that juror 7 failed to disclose that she had filed a lawsuit
18 against Marcella Kinsey, explaining that juror 7 did not know the legal proceeding she
19 herself had instituted as plaintiff was a lawsuit. (Return at p. 28.) Thus, respondent does
20 not dispute that juror 7 failed to disclose she had filed a lawsuit against Kinsey. Instead,
21 respondent disputes whether she was required to do so.

22 In allegation 18 Mr. Peterson alleged as follows:

23 During the jury selection process, including in her jury questionnaire and
24 oral voir dire, [juror 7] failed to disclose that she was sworn and testified
25 in court in order to obtain a restraining order against Marcella to prevent
26 Marcella from harming [juror 7] and her unborn child.

27 In its Return, respondent denies that juror 7 failed to disclose that she had testified in her
28 lawsuit against Ms. Kinsey, explaining that juror 7 did not know her sworn testimony was

1 in connection with a trial. (Return at pp. 28-29.) Thus, respondent does not dispute that
2 juror 7 failed to disclose that she had testified under oath. Instead, respondent disputes
3 whether she was required to do so.

4 In allegation 19 Mr. Peterson alleged as follows:

5 [Juror 7] wanted to be on Petitioner's jury. She declined to be excused
6 from serving despite the enormous financial hardship it would cause her.
7 When the court began voir dire, it asked [Juror 7] how long her employer
would pay her while she was on jury duty. She responded, "two weeks."

8 In its Return, respondent admits that juror 7 was asked how long she would be paid for if
9 she was seated, but nevertheless denies this allegation. (Return at p. 29.) Whether juror
10 7 wanted to be on the jury despite her financial hardship is a material, disputed fact.

11 In allegations 22 and 23 Mr. Peterson alleged that juror 7:

12 wanted to sit in judgment of Mr. Peterson, in part to punish him for a
13 crime of harming his unborn child – a crime that she personally
14 experienced when Marcella Kinsey threatened [juror 7]'s life and the life
15 of [juror 7]'s unborn child. For this reason, [juror 7] was actually biased
against Petitioner.

16 In its Return, respondent denies these allegations. (Return at p. 30.) Whether
17 juror 7 was biased and wanted to be on the jury to punish Mr. Peterson for what she
18 believed he had done to his unborn child, are material, disputed facts.

19 In factual allegation 25, Mr. Peterson alleged as follows:

20 Following petitioner's conviction and death sentence, [juror 7] took the
21 extraordinary step of beginning a correspondence with petitioner.
22 Between 2005 and 2007, [juror 7] sent petitioner at least 28 letters.

23 Although the very first exhibit respondent attaches in support of its Return is a 34-
24 paragraph declaration from juror 7, and many of the letters juror 7 received from Mr.
25 Peterson were printed in People Magazine, respondent nevertheless denies this allegation,
26 explaining that it simply "cannot determine the accuracy of this allegation." (Return at p.
27 31.) This denial is puzzling not just because respondent has provided a 34-paragraph
28

1 declaration from juror 7, but because – despite respondent’s professed inability to
2 “determine the accuracy of this allegation” – elsewhere in its Return respondent admits as
3 follows:

4 [T]he letters were written to Petitioner after Juror No. 7 had heard the
5 evidence in the case, and Petitioner was convicted and sentenced.

6 Petitioner has the opportunity to delve into his allegations of bias with
7 Juror No. 7 because she corresponded with Petitioner.

8
9 (Return at pp. 32, 41.) And later in its Return, respondent presents a three-page
10 discussion of the precise letters it “cannot determine” if juror 7 wrote. (Return at pp. 66-
11 69.) In addition, juror 7 extensively detailed her post-trial correspondence with Mr.
12 Peterson in *We the Jury*, the book she co-wrote with several other jurors. (Ex. 8 at p.
13 HCP-000264.) At the end of the day, however, because respondent has elected to
14 formally deny this specific factual allegation, whether and the extent to which juror 7
15 wrote to Mr. Peterson after trial remains a material, disputed fact which will have to be
16 proven or disproved at an evidentiary hearing.

17 In factual allegation 26, Mr. Peterson alleged as follows:

18 In letters to petitioner, [juror 7] disclosed an obsessive interest in the death
19 of Petitioner’s unborn child.

20 Respondent denies this allegation, explaining that juror 7’s letters covered other topics as
21 well. (Return at p. 32.) The nature, substance, and interpretation of these letters,
22 therefore, is a material, disputed fact.

23 In allegations 33 and 34, Mr. Peterson alleged that in concealing the threat of
24 losing her unborn child to violence, juror 7 concealed a material fact. Respondent denies
25 both allegations. (Return at pp. 35-36.) This is a material, disputed fact.

26 In allegation 35, 37 and 38, Mr. Peterson alleged several facts related to defense
27 counsel’s concern about prospective jurors who wanted to get on the jury to punish Mr.
28 Peterson and what he would have done had juror 7 given truthful answers to questions 54,

1 72 and 74. In its Return, respondent is either unable to admit or deny these allegations, or
2 denies these allegations, noting that it does not have access to defense counsel's thought
3 process. (Return at pp. 36-37.)

4 This is not unreasonable, since these three allegations depend on information
5 provided in declarations by defense counsel as to what he did and what his thought
6 process was. (See *Duvall*, *supra*, 9 Cal.4th at pp. 484-486 [noting that especially in
7 connection with ineffective assistance of counsel claims, respondent may not be in a
8 position to admit or deny facts alleged in a habeas petition and therefore "the general rule
9 requiring the pleading of facts should not be enforced in such a draconian fashion so as to
10 defeat the ends of justice."].) Since these factual allegations have not been admitted, they
11 too are properly the subject of an evidentiary hearing.

12 13 **III. MR. PETERSON'S RESPONSE TO RESPONDENT'S ADDITIONAL** 14 **FACTUAL ALLEGATIONS**

15 **A. Facts Affirmatively Alleged in Respondent's Return**

16 One of the purposes of a Denial is to admit or deny any factual allegations which
17 respondent makes in its Return. (*People v. Romero* (1995) 8 Cal.4th 728, 738-739.)

18 In addition to responding to Mr. Peterson's factual allegations (Return at pp. 19-
19 38), respondent provides a formal, two-page Return. (Return at pp. 6-7.) Though only
20 paragraphs I, II, and III of that two-page formal Return make affirmative, purely factual
21 allegations, Mr. Peterson responds to these allegations and, in addition, to the numbered
22 paragraphs in this section that concern mixed questions of law and fact, though they are
23 merely conclusory (paragraphs IV, V, VI and VIII):

24 1. Respondent alleges that on December 23 or 24, Mr. Peterson killed his wife and
25 unborn son, Conner. (Return at p. 6.) Mr. Peterson denies this allegation.

26 2. Respondent alleges that the jury convicted Mr. Peterson of capital murder and
27 imposed death and the California Supreme Court reversed the death sentence. (Return at
28

1 p. 6.) Mr. Peterson admits this allegation.

2 3. Respondent alleges that in this habeas action, the Supreme Court ordered
3 respondent to show cause why relief should not be granted because juror 7 failed to
4 “disclos[e] her prior involvement with other legal proceedings, including but not limited
5 to being the victim of a crime, as alleged in Claim 1.” (Return at p. 6.) Mr. Peterson
6 admits this allegation.

7 4. Respondent contends that Mr. Peterson’s juror misconduct claim is not supported
8 by competent or admissible evidence that would warrant an evidentiary hearing as to
9 Claim I. (Return at p. 6.) Mr. Peterson denies this contention, but notes that, as it is
10 asserted in respondent’s Return, it is conclusory and unsupported by evidence or specific
11 factual allegations.

12 5. Respondent contends that juror 7’s answers or omissions to the questions in the
13 juror questionnaire do not evidence bias against Mr. Peterson. (Return at p. 6.) Mr.
14 Peterson denies this contention, but notes that, as it is asserted in respondent’s Return, it
15 is conclusory and unsupported by evidence or specific factual allegations.

16 6. Respondent contends that, even assuming that juror 7 answered questions
17 incorrectly creating an inference of juror misconduct, the presumption of prejudice has
18 been rebutted because the offending conduct alleged by Mr. Peterson does not present a
19 substantial likelihood that juror 7 was actually biased against him. (Return at pp. 6-7.)
20 Mr. Peterson denies this contention, but notes that, as it is asserted in respondent’s
21 Return, it is conclusory and unsupported by evidence or specific factual allegations.

22 7. Respondent denies that Mr. Peterson’s statutory or constitutional rights were
23 violated in any manner. (Return at p. 7.) Mr. Peterson denies this contention, but notes
24 that, as it is asserted in respondent’s Return, it is conclusory and unsupported by evidence
25 or specific factual allegations.

1 **B. Facts “Alleged” in the Memorandum of Points and Authorities**

2 1. Respondent purports to incorporate by reference its attached memorandum of
3 points and authorities into its admissions and denials. (Return at p. 7.) That
4 memorandum does not merely include legal analysis explaining respondent’s position, it
5 also contains numerous factual allegations and denials (although respondent often does
6 not directly identify them as such). Respondent’s pleading technique inappropriately
7 places the burden on Mr. Peterson to tease out potential factual allegations from
8 respondent’s legal memorandum, and guess on which allegations respondent is relying,
9 as well as which of Mr. Peterson’s allegations respondent is admitting and
10 denying. Despite respondent’s tactic, Mr. Peterson nevertheless seeks to aid the court by
11 responding to what he believes are the most significant factual allegations contained in
12 respondent’s memorandum of points and authorities. (See Pen. Code, § 1484.)

13 2. Respondent claims that juror 7 “was like all the others who responded to the notice
14 for jury service. She was an average person doing her civic duty” (Return at p. 39); and
15 “Juror No. 7 was not any different from any of the other prospective jurors who appeared
16 for jury service and answered the questions on the questionnaire as they each understood
17 them” (Return at p. 40). Mr. Peterson lacks sufficient information to admit these factual
18 assertions and on that basis denies them, but notes that, as asserted in respondent’s
19 Return, they are conclusory and unsupported by evidence or specific factual allegations.

20 3. Respondent claims that Mr. Peterson “has been unable to find any admissible
21 evidence that Juror No. 7 harbored a bias against him”; “nowhere” in the book co-
22 authored by juror 7 “does an example of bias appear”; and in her letters to Mr. Peterson,
23 juror 7 “never admitted to bias.” (Return at pp. 40-41.) Mr. Peterson denies these factual
24 assertions and, in response, re-alleges paragraphs 22-35 of the Petition and the exhibits
25 cited therein. (Petition at pp. 102-06.)

26 4. Respondent extensively quotes and relies on a declaration purportedly signed by
27 juror 7 and attached as Exhibit 1 to the Return. (Return at pp. 22-24, 28, 30, 35-37, 39,
28

1 44-45, 49-52, 62, 64-66, 80, and Return Exhibit 1.) Unless otherwise stated, Mr. Peterson
2 denies each and every factual assertion in the declaration of juror 7 attached to
3 respondent's return.

4 **IV. REINCORPORATION OF FACTUAL ALLEGATIONS FROM THE** 5 **PETITION**

6 In addition to controverting any factual allegations presented in the Return, a
7 Denial may incorporate the factual allegations of the Petition itself. (*Romero, supra*, 8
8 Cal.4th at p. 739.) Mr. Peterson hereby incorporates by reference each and every one of
9 (1) the specific factual allegations in Claim I of his Petition, set forth at pages 96-108 of
10 that Petition and (2) all factual allegations made in all habeas briefing filed in the
11 Supreme Court (see *Duvall, supra*, 9 Cal.4th at p. 482 [factual allegations in memoranda
12 supporting habeas pleadings properly considered]).

13 Mr. Peterson further denies all factual allegations that are in any way contrary to,
14 or inconsistent with the facts alleged in Mr. Peterson's Petition, Reply to the Informal
15 Response, this Denial, and the exhibits offered in support of these pleadings.

16 17 **V. CONCLUSION**

18 Because respondent has raised disputed issues of material fact in connection with
19 Mr. Peterson's jury misconduct claim, an evidentiary hearing is required. In addition,
20 respondent should be ordered to admit or deny the new factual allegations set forth in
21 Section I of this Denial.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As the Denial makes clear, there are numerous factual disputes between the parties which require resolution at an evidentiary hearing. As such, full briefing on the legal and factual issues prior to resolution of these facts is premature. Instead, the Court should follow the traditional procedure of post-hearing briefing after the factual disputes have been resolved. However, because several positions taken by respondent in its Return and Memorandum of Points and Authorities may impact both the scope and focus of the evidentiary hearing, Mr. Peterson will address them in this Memorandum.

This Memorandum is divided into three sections – a statement of the facts relevant to the juror misconduct claim (omitted by respondent) and two legal arguments. The first argument – presented in section III-A below – will address respondent’s novel contention that although the California Supreme Court issued an Order to Show Cause after reviewing Mr. Peterson’s factual allegations, many of which respondent now disputes, this Court should refuse to hold an evidentiary hearing and, instead simply “discharge the Order to Show Cause.” (Return at p. 7.) As will be discussed below, an evidentiary hearing is required not only based on the plain language of the Supreme Court’s order, but because in its Return respondent has explicitly placed at issue numerous material factual allegations of the Petition. The second argument – presented in section III-B below – will discuss several of respondent’s arguments in connection with the scope of the evidentiary hearing.

II. STATEMENT OF FACTS

Respondent correctly notes that guilt is “not at issue in this habeas proceeding.” (Return at p. 8.) Instead, as respondent also notes, the only issue before this Court is whether juror 7 committed prejudicial misconduct. (Return at p. 8.) It is therefore curious that – quoting from the Supreme Court’s opinion in the direct appeal –

1 respondent provides a lengthy Statement of Facts which does not address the facts
2 relating to the misconduct issue at all, but instead addresses only the crime itself. (Return
3 at pp. 8-19.) Given the absence of a relevant Statement of Facts in respondent's Return,
4 Mr. Peterson will provide a short Statement of Facts directed to the misconduct issue
5 before this Court.

6 **A. The Jury Questionnaire**

7 Jury selection in Mr. Peterson's case began on March 4, 2004. (11 RT 2025.)
8 Prior to voir dire, all prospective jurors completed a juror questionnaire. Juror 7's juror
9 ID number was 16756.⁶ (Ex. 44 at p. HCP-000882.) Juror 7 appeared as part of a jury
10 panel before the trial court on March 9, 2004. (13 RT 2564.) The trial court swore in the
11 members of the jury panel and confirmed that they could accurately and truthfully answer
12 all questions, under penalty of perjury, propounded to them regarding their
13 qualification and competency to serve on the jury. (13 RT 2571.) After introducing the
14 parties, explaining the procedures of a capital case, and explaining hardship, the trial
15 court briefly reviewed the questionnaire with the panel and instructed the prospective
16 jurors to fill out the questionnaire. (13 RT 2589.)

17 Juror 7 indicated on her questionnaire that she was a 34-year-old woman who
18 grew up in East Palo Alto. (Ex. 44 at p. HCP-000883.) She initially checked that she
19 was "single" but scratched it out and indicated that she had been living with a significant
20 other for five years who was employed as a "mail courier." (Ex. 44 at p. HCP-000884.)
21 She had four children, ages 1, 2, 11 and 15, at least one of whom lived in her home where
22 she also lived with her mother. (Ex. 44 at p. HCP-000885.) She indicated she had some
23 college/or tech school and she had training as a medical assistant and a CNA⁷. (Ex. 44 at
24 p. HCP-000886.) At the time she filled out the questionnaire, she was employed as a
25

26 ⁶ Juror 7 wrote her ID number as "06756" on her questionnaire, but it appears that
27 this was an error as there was no juror with that ID number who appeared on March 9,
2004, the date indicated on juror 7's questionnaire.

28 ⁷ "CNA" presumably stands for "Certified Nurse's Assistant."

1 bank teller for Stanford Federal Credit Union and had been with the bank for
2 approximately one year. (Ex. 44 at p. HCP-000887.) She stated that when she was
3 younger she wanted to be a lawyer and that she had taken a citizen police academy class.
4 (Ex. 44 at p. HCP-000888.)

5 Question 54a asked whether she had “ever been involved in a lawsuit (other than
6 divorce proceedings)?” Juror 7 put an “x” next to “No.” (Ex. 44 at p. HCP-000889.)
7 Next, question 54b, a follow-up to 54a, asked, if yes, whether she had been the plaintiff,
8 defendant or both and asked for an explanation. Juror 7 left that question blank. (Ex. 44
9 at p. HCP-000890.) In question 68, in response to whether any of her relatives or friends
10 have been arrested or charged with a criminal offense, she checked “yes” and wrote that
11 her brother was in prison. (Ex. 44 at p. HCP-000893.) In response to question 72, which
12 asked whether she had “ever participated in a trial as a party, witness, or interested
13 observer,” she checked “No.” (Ex. 44 at p. HCP-000894.) She also checked “No” in
14 response to question 74 which asked whether she or any member of her family, or close
15 friends, had ever been a victim or a witness to any crime. (*Ibid.*)

16 In response to question 87, which asked whether she recognized any of the parties
17 in the case, including Mr. Peterson, she checked “Yes” and wrote “Well who doesn’t?”
18 (Ex. 44 at p. HCP-000896.) She also indicated that she had read, heard, and/or seen
19 something about the case, but “just the basic’s [sic].” (Ex. 44 at p. HCP-000896-897.)
20 She checked “No” in response to question 101 which asked whether there is anything else
21 the court should know about her qualifications as a juror. (Ex. 44 at p. HCP-000898.) At
22 the end of the questionnaire, Juror 7 attested that it was true and correct to the best of her
23 knowledge, signed it under penalty of perjury and dated it March 9th, 2004. (Ex. 44 at p.
24 HCP-000900.)

25 **B. Voir Dire of Juror 7**

26 On Monday, March 12, 2004, juror 7 returned to the courtroom for *Hovey* voir
27 dire. (Ex. 46 at p. HCP-000923.) The trial court first asked whether “they” (meaning her
28

1 employer) would pay her while she served on the jury. (*Ibid.*) Juror 7 said that her
2 employer would pay her for only two weeks of jury service. (Ex. 46 at p. HCP-000924.)
3 Although the court then began to excuse her, and in contrast to virtually every other
4 prospective juror called to serve, juror 7 made clear that despite the fact that she would
5 not be paid for five months, she would nevertheless serve as a juror:

6 Q: Two weeks. Then you wouldn't make it. Okay. You're excused.

7 A: That's it?

8 Q: That's it. We can't expect you to be here and not earn a living.

9 A. Thank you.

10 MR. GERAGOS: Did you ask her if it was a hardship?

11 THE COURT: What?

12 MR. GERAGOS: Did you ask her if it was a hardship?

13 THE COURT: Only gets paid for two weeks. I take judicial notice
14 it's a hardship. That's right; You can't sit here for five months without
getting paid, right?

15 PROSPECTIVE JUROR: Okay.

16 MR. GERAGOS: I think she's willing to --

17 THE COURT: You want to sit her for five months without getting
18 paid? If you want to, that's fine. I'll go through the process.

19 PROSPECTIVE JUROR: I mean I'm willing to, you know--

20 THE COURT: Okay. Sit down.

21 PROSPECTIVE JUROR: Okay.

22 (Ex. 46 at p. HCP-000924.) The Court reminded juror 7 that "if something develops"
23 with her financial situation, he could not let her leave the jury. (Ex. 46 at p. HCP-
24 000925.) Juror 7 stated that she had discussed the matter with her family, which included
25 four minor children, and that her significant other would "just have to carry the load."
26 (Ex. 46 at pp. HCP-000925, 000935.)

27 In addition to working in the banking and medical field, juror 7 mentioned that she
28

1 also worked for a law firm “that went under.” (Ex. 46 at p. HCP-000936.) During
2 defense counsel’s questioning she affirmed that she had been exposed to a lot of publicity
3 about the case, mostly through television. (Ex. 46 at p. HCP-000948-949.) At the end of
4 the questioning, the court ordered her to return on May 13th for jury selection. (Ex. 46 at
5 p. HCP-000955.) The court thanked her for “stepping up and practically volunteering to
6 serve.” (Ex. 46 at p. HCP-000956.) Juror 7 would initially be picked as alternate juror
7 number 2 (42 RT 8344), and she became juror 7 during deliberations after another juror
8 was removed from the jury. (19 CT 5990.)

9 **C. The Marcella Kinsey Incident**

10 On November 27, 2000, in the same building where she would report for jury
11 service three and a half years later, juror 7 filed a “Petition for Injunction Prohibiting
12 Harassment” against Marcella Kinsey. (Ex. 45 at p. HCP-000905.) On the form, juror 7
13 indicated that Ms. Kinsey was her ex-boyfriend’s ex-girlfriend. (*Ibid.*) The petition
14 stemmed from a September 23, 2000 incident where Ms. Kinsey came to juror 7’s house,
15 kicked in her front door, slashed her ex-boyfriend’s tires, tried to “mase [sic] Eddie” and
16 was still making threats against juror 7 and her house. (*Ibid.*) Under “persons to be
17 protected” juror 7 listed her name as well as her unborn child. (*Ibid.*)

18 Juror 7 also provided a narrative description of the crime, making clear she was
19 both a witness to and a victim of vandalism and assault. She identified Eddie Whiteside
20 as her ex-boyfriend. (Ex. 45 at p. HCP-000909.) Ms. Kinsey came to juror 7’s house in
21 Mountain View, slashed Mr. Whiteside’s tires and yelled and screamed in front of her
22 house. (*Ibid.*) When Mr. Whiteside ran outside to tell Ms. Kinsey to leave, she tried to
23 “spray Eddie with mase [sic]” at which point he ran inside and told juror 7 to call the
24 police. (*Ibid.*) Ms. Kinsey then kicked in juror 7’s front door and ran back to her car and
25 left. As a result of this incident, juror 7 and her family were evicted from the property
26 and they had to move to East Palo Alto. (*Ibid.*) Ms. Kinsey discovered juror 7’s new
27 address and, on November 21, followed juror 7 while she was driving home from work.
28

1 Juror 7 asked Ms. Kinsey to stop harassing her and she replied that she “would handle it
2 on the streets.” (*Ibid.*) As a result of Ms. Kinsey’s actions, juror 7, who was five months
3 pregnant at the time, had early contractions and feared having her baby early. She did not
4 want Ms. Kinsey anywhere near the baby after it was born, as she thought Ms. Kinsey
5 would try to hurt the baby “with all the hate and anger” she had for juror 7. (*Ibid.*)

6 On December 13, 2000, Judge Rosemary Pfeiffer presided over a San Mateo
7 County Superior Court hearing on the petition juror 7 filed against Ms. Kinsey. (Ex. 45
8 at p. HCP-000914.) Juror 7 and Ms. Kinsey, both appearing pro per, were sworn and
9 testified. As a result of the hearing, the court granted juror 7’s petition and ordered Ms.
10 Kinsey to stay 100 yards away from juror 7 and have no contact by phone or mail. (*Ibid.*)
11 The protected persons were listed as juror 7 and her unborn child. (Ex. 45 at p. HCP-
12 000912.) The order expired at midnight on December 13, 2003. (*Ibid.*)

13 As a result of the September 23, 2000, incident, the Santa Clara County District
14 Attorney filed a complaint charging Ms. Kinsey with two counts of misdemeanor
15 vandalism in violation of Penal Code section 594 subdivisions (a)/(b)(2)(A). (Return, Ex.
16 2 at p. 2020_00066.) The first count alleged that she maliciously destroyed car tires and
17 the second count alleged that she damaged and destroyed a front door. (*Ibid.*) Ms.
18 Kinsey was convicted and served one week in the Elmwood facility at Santa Clara
19 County jail.⁸ (Ex. 45 at p. HCP-000916.)

20 **D. The Eddie Whiteside Incident**

21 As noted in the Denial, when respondent filed its Return, it attached documents
22 showing that the September 23, 2000 incident with Marcella Kinsey was not the only
23 time juror 7 had both witnessed and been the victim of a crime. Respondent’s Return
24

25 ⁸ It appears that at some point in 2001 juror 7 may have also filed a civil lawsuit
26 against Ms. Kinsey in order to recover costs from Ms. Kinsey’s vandalism, including
27 juror 7’s eviction from her home. (See Ex. 45 at p. HCP-000917 [Ms. Kinsey’s
28 December 9, 2001 letter to Judge Pfeiffer stating that juror 7 “blames me for being
evicted from her home and is seeking relief from the courts.”]; see also Ex. 45 at p. HCP-
000920 [a list of monetary losses, including “tires for car” and “lost security deposit.”])

1 shows that juror 7 was also the victim of a November 2, 2001 domestic violence matter
2 involving her then-boyfriend, Mr. Whiteside. (Return, Ex. 2 at p. 2020_00015.) On that
3 evening the East Palo Alto police department arrested Mr. Whiteside and on December 7,
4 2001, the San Mateo County District Attorney filed a complaint charging him with five
5 misdemeanor counts: infliction of corporal injury on a spouse or cohabitant in violation
6 of Penal Code section 273.5 subdivision (a); battery of a former spouse, boy/girlfriend,
7 non-cohabitant in violation of Penal Code section 243 subdivision (e); false
8 imprisonment in violation of Penal code section 236; cruelty to a child by endangering
9 health in violation of Penal Code section 273A subdivision (b); and misdemeanor battery
10 in violation of Penal Code section 242.

11 On December 11, 2001, at his initial appearance, Mr. Whiteside pled not guilty to
12 all counts of the complaint and the court appointed an attorney to represent him. (Return,
13 Ex. 2 at p. 2020_00027-00028.) On January 2, 2002, Mr. Whiteside pled no contest to
14 the battery charge and the court dismissed the remaining charges pursuant to a negotiated
15 plea agreement.⁹ (Return, Ex. 2 at p. 2020_00025.) The court sentenced Mr. Whiteside
16 to serve 10 days in county jail (with credit for 2 days served), placed him on supervised
17 probation for 18 months and court probation for 18 months, and ordered him to attend
18 104 hours of domestic violence counseling and pay various fines and fees. (Return, Ex. 2
19 at p. 2020_00032-00034.) The court also ordered Mr. Whiteside not to annoy, harass or
20 contact “Richelle Niq and Baby Doe.” (Return, Ex. 2 at p. 2020_00035-00037.) On
21 March 19, 2003, the court converted Mr. Whiteside’s supervised probation into court
22 probation and on October 11, 2005, Mr. Whiteside made his last payment to the domestic
23 violence fund. (Return, Ex. 2 at p. 2020_00044-00045.)

24 On June 27, 2002, juror 7 gave birth to a child. (Den. Ex. 1 at p. 3.) This child
25 was born 237 days after the November 2, 2001 incidents of domestic violence were
26

27 ⁹ It appears from court records that the battery count was added after the District
28 Attorney filed the initial complaint. (Return, Ex. 2 at p. 2020_00031.)

perpetrated against juror 7 and “Baby Doe,” making it highly probable that juror 7 was pregnant at the time that Eddie Whiteside battered her, as she had been, with another child, when Ms. Kinsey kicked down her front door, causing her to fear for the life of that unborn child.¹⁰

E. The Second Marcella Kinsey Incident

In addition to the initial Marcella Kinsey incident (September of 2001) and the Eddie Whiteside incident (November of 2001), there was yet another incident in which Kinsey committed a crime in juror 7’s presence: as noted above, on December 13, 2000, San Mateo Superior Court Judge Pfeiffer ordered Ms. Kinsey to stay at least 100 yards away from juror 7 and her child. But on July 21, 2001, Ms. Kinsey was accused of violating this order – willful disobedience of a court order in violation of Penal Code section 166 subdivision (a)(4). (Return, Ex. 2 at p. 2020_00017.) Respondent’s own paperwork states that “[juror 7] was likely the listed victim out of the 7-21-2001 incident.” (Return, Ex. 2 at p. 2020_00017.)

F. Juror 7’s Post-Verdict Letters to Mr. Peterson

Shortly after the verdict, juror 7 initiated a correspondence with Mr. Peterson, sending him over 25 letters over a period of two years. In the letters, juror 7 is particularly focused on Conner Peterson and her belief that Mr. Peterson harmed his own son, and comparing that scenario with what she described as the intensity of her own experience as a parent. For example, in the first letter, juror 7 stated: “What happened that night, Scott? What pushed you so far to the limit, where you felt that you needed to kill someone who not only loved you so much, but someone who was carrying [sic] a part of you inside of her?” (Ex. 47 at p. HCP-000958.) She continued:

My heart aches for your son. Why couldn’t he have the same chances in life as you were given? You should have been dreaming of your son being the best at whatever he did in life, not planning a way to get rid of him!

¹⁰ See National Institutes of Health, *About Pregnancy* (<https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo>) (last updated June 18, 2021 [pregnancy usually lasts about forty weeks (280 days)]).

1 To be able to experience the feeling inside when a father or mother
2 witness their child's first steps; the sound of their laugh, the excitement in
3 their eyes when their Mommy/Daddy walk in from being at work all day,
4 *the pain you feel in your heart when your child is hurt, whether physically*
5 *or emotionally, etc* May not sound like much to you as you sit in there
6 standing by your selfish lies *But as a parent myself, these feelings are*
7 *much more intense* than the feelings you get for any man/woman you
8 might ever meet in life and fall in love or lust with. Those feelings can't
9 even match the passion and unconditional love a parent feels for their
10 child.

11 (Ex. 47 at p. HCP-000959-60) (emphasis added).

12 In a December 17, 2005 letter juror 7 wrote "I hope Laci & Conner will be able to
13 hold each other on the 23rd. I still hope and pray you can one day make peace with
14 yourself." (Ex. 46 at p. HCP-000967.) Later in the same letter, she wrote "I just pray
15 god has givin [sic] laci [sic] arms to hold her presous [sic] lil baby." (Ex. 47 at p. HCP-
16 000968.) In a January 11, 2006 letter, after describing a shooting incident involving one
17 of her sons, she wrote "Damit [sic] Scott that was your son! Your frist [sic] born. If you
18 never wanted children you should have married someone with the same wants as you!"
19 (Ex. 47 at p. HCP-000971.) Then she added, "[t]he fear that runs over a parent when
20 they can't help [their child] is the worst fear ever. You just remember that." (Ex. 47 at p.
21 HCP-000972.) (emphasis added).

22 In a March 17, 2006 letter, after describing her financial struggles and how it
23 affected her children, she wrote "Conner would have never had to go through this. He
24 would have had a wonderful life." (Ex. 47 at p. HCP-000975.) In a May 30, 2006 letter
25 she described, in detail, visualizing Conner: "You know what Scott, I see your son. I can
26 visualize him with dark hair, dark skin, beautiful little boy. I see Laci's big beautiful
27 smile shining down on him, there should be you somewhere in there Scott." (Ex. 47 at p.
28 HCP-000977-978.) Juror 7 stated in another letter that she thought of Laci and Conner
"daily." (Ex. 47 at p. HCP-000976.)

III. ARGUMENT

In light of juror 7's history as both a witness to and victim of multiple crimes and her role as the testifying plaintiff in the lawsuit against Ms. Kinsey – and as explained in the Denial – juror 7's answers to questions 54 (asking if she had ever been party to a lawsuit), 72 (asking if she had ever participated in a trial as a participant, witness, or an interested observer) and 74 (asking if she or any members of her family, or close friends, have ever been a victim or witness to any crime) of the questionnaires were false. Juror 7 witnessed Ms. Kinsey slash Mr. Whiteside's tires. She both witnessed and was the victim when Ms. Kinsey kicked down her front door. This was not a minor and easily forgettable incident. Indeed, the declaration of her fellow juror belies any suggestions that juror 7 simply forgot about such an incident: "[Juror 7] told me that she got pregnant by a guy who had a girlfriend, and that during her pregnancy, she and the girlfriend had some problems and the woman threatened her." (Ex. 50 at ¶ 6.) Juror 7 (carrying her unborn child) and her other minor children were evicted from their home as a result of the attack, and juror 7 actively involved law enforcement in the situation, seeking a restraining order and testifying under oath against Ms. Kinsey, because she feared for her safety and the safety of her unborn child. She also likely witnessed Ms. Kinsey illegally violating that restraining order. And, critically, again while pregnant, juror 7 both witnessed and was the victim of Mr. Whiteside's acts of domestic violence.

Yet in response to question 54 juror 7 did not disclose that, while she was four and a half months pregnant, she filed a petition for an injunction prohibiting harassment to prevent Ms. Kinsey from harming her and her unborn child. She did not disclose in response to question 72 that she testified at the hearing held in connection with the injunction to prevent Ms. Kinsey from harming her and her unborn child. She did not disclose in response to question 74 that she was the victim of a crime – both when Ms. Kinsey vandalized her front door and threatened her and her baby and when she was the victim of Eddie Whiteside's abuse. She did not disclose in response to question 74 that

1 she was a witness to a crime when she saw Ms. Kinsey slash Mr. Whiteside's tires, or
2 when Ms. Kinsey violated the restraining order and was arrested by police.

3 Although Mr. Peterson need not prove juror 7 intentionally concealed these facts
4 to establish misconduct, it is apparent from her conduct before, during, and after the trial
5 that during voir dire she failed to disclose numerous incidents that posed threats of harm
6 to her unborn children. This enabled her to sit in judgment of Mr. Peterson for the crime
7 of harming *his* unborn child. Before trial, juror 7 bent over backwards to be selected for
8 the jury; she was willing to sit on the jury for five months without pay, although she had
9 four minor children to care for, and though it caused her such extreme financial hardship
10 that she had to borrow money from a fellow juror. Indeed, juror 7's conduct during jury
11 selection was so unusual that the judge commented that she "stepp[ed] up and practically
12 volunteer[ed] to serve." (Ex. 46 at p. HCP-000956.) During deliberations, juror 7
13 passionately argued for Mr. Peterson to be punished as harshly as possible for Conner's
14 death. And after the trial, in the extraordinary correspondence she initiated with Mr.
15 Peterson, juror 7 again demonstrated her intensely emotional response to her belief that
16 Mr. Peterson killed Conner and contrasted it with her own "worst fear" that one of her
17 own children would be hurt. In short, respondent cannot rebut the presumption that there
18 is a substantial likelihood that juror 7 was actually biased toward Mr. Peterson because of
19 her prior experiences, which she failed to disclose to the court and the parties.

20 **A. In Light of the Supreme Court's Order to Show Cause and the**
21 **Numerous Factual Disputes Between the Parties, an Evidentiary Hearing**
22 **Is Required**

23 Mr. Peterson filed a Petition for Writ of Habeas Corpus with the California
24 Supreme Court in November 2015. In his prayer for relief Mr. Peterson specifically
25 requested his sentence be vacated or, if respondent disputed any of the factual allegations,
26 he be given an evidentiary hearing. (Petition at p. 277.) After nearly five years of
27 consideration – and after receiving further briefing from both respondent and Mr.
28

Peterson – the Supreme Court issued an Order to Show Cause, requiring respondent to show cause “why the relief prayed for should not be granted on the ground that Juror No. 7 committed prejudicial misconduct by not disclosing her prior involvement with other legal proceedings, including but not limited to being the victim of a crime, as alleged in Claim 1.” (*In re Peterson*, S230782, Order of October 14, 2020.) Respondent has now filed a Return in which she denies a number of key factual allegations contained in this claim of the Petition.

In its Return, respondent argues that despite the Supreme Court’s order and the denials of material fact in its own Return, this Court does not need to hold an evidentiary hearing and can simply discharge the Order to Show Cause. (Return at p. 7.) As discussed below, in light of the actual language used by the Supreme Court in its Order to Show Cause (and binding state law) – as well as the numerous factual allegations which respondent’s Return has placed in dispute – the argument is puzzling. An evidentiary hearing is certainly required in this case.

1. The Language of the Supreme Court’s October 14, 2020 Order Requires an Evidentiary Hearing

First things first. Under state law, there is no great mystery as to what the Supreme Court’s order means. When a habeas petition has been filed, “[i]f the court determines that the petition does not state a prima facie case for relief . . . the court will deny the petition outright, such dispositions being commonly referred to as ‘summary denials.’” (*People v. Romero, supra*, 8 Cal.4th at p. 737.) The Supreme Court’s “issuance of an order to show cause returnable before a lower court is an implicit preliminary determination that the petitioner has made a sufficient prima facie statement of specific facts which, if established, entitle him to habeas corpus relief under existing law.” (*In re Hochberg* (1970) 2 Cal.3d 870, 875 n.4.)

Here, in its briefing to the Supreme Court, respondent urged the Court to issue a summary denial. Respondent argued that juror 7 did not falsely answer question 54

1 (asking if she had ever been involved in a lawsuit) because she could have believed a
2 lawsuit involved a suit for money or property. (IR at p. 27.) According to respondent,
3 she did not falsely answer question 72 (asking if she had ever participated in a trial as a
4 participant or witness) because the lawsuit against Ms. Kinsey was not a criminal action.
5 (IR at p. 29.) And in respondent's view she did not falsely answer question 74 (asking if
6 she or her family/close friends had been the victim or witness to any crime) because she
7 would not have understood that Ms. Kinsey's harassment and vandalism was a crime.
8 (IR at p. 29.) Respondent asked the Supreme Court to summarily reject Mr. Peterson's
9 claim. (IR at p. 40.) The Supreme Court considered respondent's arguments, rejected
10 them, and issued an Order to Show Cause.

11 Issuance of the Order to Show Cause reflected the Court's considered view that
12 the Petition and exhibits "established a prima facie case for relief" and that "the petitioner
13 would be entitled to relief if his factual allegations are proved." (*Duvall, supra*, 9 Cal.4th
14 at p. 475.) When a higher court determines that a petitioner would be entitled to relief if
15 he proved his factual allegations at a hearing and issues an Order to Show Cause
16 returnable before a lower court, the lower court may not (1) ignore the higher court's
17 determination and (2) issue a summary denial of the petition without a hearing. (*Rose v.*
18 *Superior Court* (2000) 81 Cal.App.4th 564, 574.)

19 *Rose* is almost identical to this case. There, defendant was convicted of murder
20 and filed a habeas petition in the Court of Appeal. Just as in this case, in his habeas
21 petition he urged the reviewing court to "grant the Petition for Writ of Habeas Corpus . . .
22 or in the alternative, hold an evidentiary hearing." (*Rose, supra*, 81 Cal.App.4th at p.
23 574.) Just as in this case, the appellate court determined that a prima facie case had been
24 established, so it issued an order to show cause returnable before the Superior Court. Just
25 as in this case, the order to show cause required respondent "to show cause before the
26 Superior Court . . . when the matter is placed on calendar, why the relief prayed for in the
27 petition should not be granted." (*Ibid.*)
28

1 After receiving both a return from the respondent and a denial from the petitioner,
2 the lower court in *Rose* did exactly what respondent now asks this Court to do – it
3 summarily denied the petition without holding an evidentiary hearing. Petitioner filed a
4 second habeas petition in the Court of Appeal; the Court of Appeal construed this second
5 habeas petition as a Petition for Writ of Mandate and issued a second order to show
6 cause. This second order to show cause was returnable before the Court of Appeal, not
7 the Superior Court.

8 Respondent responded in the Court of Appeal, arguing that the Superior Court did
9 nothing wrong because the language of the original order to show cause (issued in
10 connection with the original habeas petition) did not require the Superior Court to hold an
11 evidentiary hearing. (*Rose, supra*, 81 Cal.App.4th at p. 574.) The appellate court
12 specifically rejected this argument, noting that (1) petitioner had requested either a grant
13 of relief or, in the alternative, an evidentiary hearing and (2) the order to show cause
14 “explicit[ly]” ordered respondent to show “why the relief prayed for in the petition
15 should not be granted.” (*Ibid.*) In rejecting what it termed an “inexplicabl[e]” argument,
16 the appellate court concluded “[r]espondent’s choice was clear: either release [petitioner]
17 or hold an evidentiary hearing.” (*Ibid.*) The appellate court granted the petition for writ
18 of mandate and ordered a different judge of the Superior Court to hold an evidentiary
19 hearing. (*Rose, supra*, 81 Cal.App.4th at pp. 575-576.)

20 This case is just like *Rose*. Here, too, issuance of the Order to Show Cause
21 reflected the Supreme Court’s opinion that the Petition and accompanying exhibits
22 established a prima facie case. Like the petition in *Rose*, the Petition here asked the court
23 to either grant the writ and “vacate the judgment and sentence imposed upon petitioner
24 or, in the alternative, . . . permit discovery . . . and order an evidentiary hearing”
25 (Petition at p. 277.) Like the order to show cause in *Rose*, the order here required
26 respondent to show cause “why the relief prayed for in the petition should not be
27 granted.” Like *Rose*, here the “choice [is] clear: either release [petitioner] or hold an
28

evidentiary hearing.” (*Rose, supra*, 81 Cal.App.4th at p. 574.)

To be sure, one can certainly imagine a scenario where even though a higher court has issued an order to show cause, further pleadings show that no hearing is required. For example, if in this case respondent had conceded in its Return each of the factual allegations Mr. Peterson alleged in support of the jury misconduct claim, there might be no need for a hearing to resolve disputed facts or assess credibility. In that situation, the factual allegations and all credibility assessments would have been conceded in the Return.

But it bears emphasis that this is not such a case. Here, as discussed in the Denial, respondent has elected to deny critical factual allegations in the Petition. By any standard this is *exactly* the type of case in which an evidentiary hearing should be held.¹¹

**2. Because Respondent Disputes Key Facts in Connection with the
Juror Misconduct Claim, and Relies Almost Entirely on Juror 7’s
“Good Faith,” an Evidentiary Hearing Is Required**

Mr. Peterson has described his misconduct claim in the Denial. Suffice it to say here that he has alleged (1) juror 7 provided false answers to questions 54, 72, and 74 in the jury questionnaire and (2) respondent cannot rebut the presumption, arising from these false answers, that juror 7 was biased against Mr. Peterson, in violation of his constitutional right to an impartial jury. In Mr. Peterson’s Denial, he has identified the

¹¹ This is especially true here. In its Return, respondent makes the identical three arguments it made in the Informal Response: (1) as to question 54, juror 7 believed a lawsuit had to involve money or property, (2) as to question 72, the lawsuit against Ms. Kinsey was not a criminal action, and (3) as to question 74, juror 7 did not believe the harassment was a crime. (Compare IR at pp. 27-29 *with* Return, Ex. 1, at ¶¶ 10, 22, 23-24.) The Supreme Court considered these arguments, rejected respondent’s request for summary denial, and issued an Order to Show Cause. Respondent raises these identical arguments in its Return, now “supported” by a declaration by juror 7 parroting language nearly identical to that crafted by respondent in its Informal Response. Whether the statements in this declaration, made under these circumstances, are credible is a material issue of disputed fact requiring an evidentiary hearing at which juror 7 can testify and her credibility can be assessed by the Court.

1 material factual allegations which respondent has disputed.

2 This Court will be tasked with resolving these disputed material facts at an
3 evidentiary hearing. The most basic of these disputes is whether juror 7 answered
4 questions 54a, 54b, 72, and 74 falsely on her juror questionnaire. As discussed above,
5 these questions asked whether juror 7 had been party to a lawsuit (54a), and if so whether
6 she was the plaintiff, defendant or both (54b), whether juror 7 had ever participated in a
7 trial as a witness, party, or interested observer (72), and whether juror 7 or any member
8 of her family or close friends had been a victim of or a witness to a crime (74).
9 Respondent argues that juror 7, who answered “no” to all of the above questions, “did not
10 answer the question incorrectly in her mind” as to question 54a, answered question 72
11 truthfully because, by legal definitions, she had not participated in a trial as a party or a
12 witness, and argues that she did not consider herself a victim of, or witness to, a crime as
13 asked in question 74. (Return at pp. 22-23.) All of respondent’s arguments rely on juror
14 7’s good faith answers to the jury questionnaire, a question which in turn depends on her
15 credibility – whether she forgot about the incidents with Marcella Kinsey and Eddie
16 Whiteside or whether she concealed them because she wanted to sit in judgment of Mr.
17 Peterson and she believed that revealing them would prevent her from being selected to
18 serve on the jury. (*In re Manriquez* (2018) 5 Cal.5th 785, 805 [noting that intentional
19 nondisclosure is strong proof that can sustain the presumption of prejudice raised by juror
20 concealment].) An evidentiary hearing is the proper vehicle to assess juror 7’s
21 credibility. (*In re Hardy* (2007) 41 Cal.4th 977, 993 [“The central reason for referring a
22 habeas corpus claim for an evidentiary hearing is to obtain credibility determinations.”];
23 see also *Williams v. Taylor* (2000) 529 U.S. 420, 441-442 [noting that even if juror’s
24 technical or literal interpretation of a question at voir dire was correct, her silence could
25 suggest an unwillingness to be forthcoming and thus whether she was impartial needs to
26 be determined at an evidentiary hearing].)

27 In the same vein, respondent denies that juror 7 wanted to be on Mr. Peterson’s
28

1 jury despite a financial hardship as Mr. Peterson alleged in paragraph 19 of the habeas
2 corpus petition. (Return at p. 29.) Juror 7 reported on her jury questionnaire that she had
3 four minor children and worked as a bank teller for Stanford Federal Credit Union. (Ex.
4 44 at pp. HCP-000885, 000887.) Though she acknowledged that the Credit Union paid
5 for only two weeks of jury service, she stated that she was willing to sit as a juror for up
6 to five months without pay. (Ex. 46 at p. HCP-000924.) In her declaration, juror 7 does
7 not address her financial situation during the jury selection process, indicating only that
8 the trial judge excused her after she stated that she would be paid for two weeks of jury
9 service and that Mr. Peterson's attorney intervened to keep her in the jury pool. (Return,
10 Ex. 1 at ¶¶ 14-15). Respondent argues that juror 7 did not face financial hardship
11 because she indicated during voir dire that her significant other could "carry the load."
12 (Return at p. 29.)

13 As with the argument above, respondent's theory depends on juror 7's credibility
14 – whether she and her significant other had a conversation in which he offered to "carry
15 the load," the parameters of their agreement, and if it would have been a financial
16 hardship for her and her family with four minor children to forgo a paycheck for 5
17 months¹² – are all disputes of material fact that must be resolved at an evidentiary
18 hearing.

19 Respondent further denies, as Mr. Peterson alleged in paragraphs 22 and 23, that
20 juror 7 was biased and wanted to sit on Mr. Peterson's jury to punish him for what she
21 believed he had done to his unborn child.¹³ (Return at p. 30.) As alleged in paragraph
22

23 ¹² On March 26, 2004, 17 days after she filled out her jury questionnaire juror 7
24 signed a document entitled "Income and Expense Declaration" indicating that her salary
25 at the credit union was \$14.21 an hour and she worked 40 hours per week and received
26 approximately \$400 per month in spousal support from a different marriage. (Den. Ex. 2
27 at p. 5.) Her net pay for two weeks was approximately \$942. (*Ibid.*) Her monthly
28 expenses were approximately \$3800 and her only listed asset was \$160 in checking and
savings accounts. (*Id.* at p. 6.)

¹³ In response to the allegation in paragraph 23 of the petition that juror 7 was
actually biased, respondent points to juror 7's declaration averring that she does not have

1 13, juror 7, while four and a half months pregnant, filed a temporary restraining order
2 against Ms. Kinsey, swearing under oath that because of Ms. Kinsey's actions she (juror
3 7) "started having early contractions" and "fears for her unborn child" because Ms.
4 Kinsey "would try to hurt the baby, with all the hate and anger she has for [juror 7]."
5 (Petition at pp. 99-100.) In her declaration, juror 7 now says that Ms. Kinsey's actions in
6 threatening the baby, slashing her ex-boyfriend's tires, and kicking down her door were
7 "minor indignit[ies]" and "undignified means of communicating frustrations" that did not
8 cause her to feel victimized. (Return, Ex. 1 at ¶ 24.)

9 Without explanation, respondent argues that the death of a pregnant woman and
10 her unborn child (charged here) and pregnant juror 7's fear for her unborn child from Ms.
11 Kinsey's threats of criminal violence are not "remotely similar." (Return at p. 30.)
12 Respondent suggests that the jury deliberations prove that juror 7 was not biased because
13 of her experience with Ms. Kinsey. (Return at pp. 30-31.) Relatedly, respondent denies
14 that juror 7, by concealing the threat of losing her unborn child to violence, concealed a
15 material fact. (Return at pp. 35-36.)

16 Respondent's argument that the deliberations prove that juror 7 was not biased is
17 belied by the declarations of her fellow jurors, the book she co-wrote with her fellow
18 jurors, and her letters to Mr. Peterson following the verdict. For example, a fellow juror
19 noted that juror 7 used the nickname "Little Man" for Conner and when she entered the
20 deliberations for the first time she "came in talking a big game about how we should 'get
21 Scott for what he did to Laci and Little Man.'" (Ex. 51 at ¶ 8.) In the book juror 7 co-
22 wrote after the trial, she noted that she was one of two jurors holding out for a first-
23 degree murder verdict on Conner's death: "'How can you not kill the baby' [juror 7] said
24 pointing to her stomach." (Ex. 8 at p. HCP-000238.) Her letters, discussed above,
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26
27 and has never had any bias against Mr. Peterson. (Return at p. 30.) However, a juror's
28 own assessment of her bias is not admissible to prove that she was not biased.
(*Manriquez, supra*, 5 Cal.5th at p. 800.)

1 similarly demonstrate an obsession with Laci and Conner. (*Id.* at p. HCP-000264.)

2 Once again, a familiar theme emerges from respondent – the essence of juror 7’s
3 impartiality depends on whether she purposefully concealed her experience with Ms.
4 Kinsey when she filled out the jury questionnaire or simply forgot the “minor indignity”
5 with the passage of time (approximately 2 and a half years). Whether juror 7 acted in
6 good faith in answering questions 54, 72 and 74 is a question of her credibility, which is a
7 question of fact. (See, e.g. *In re Boyette* (2013) 56 Cal.4th 866, 871-873 [referring
8 habeas corpus petition to referee to determine whether juror intentionally concealed
9 criminal history during voir dire].) Just as in the pre-trial voir dire context where a trial
10 court assesses a juror’s state of mind based on her demeanor and credibility (*Wainwright*
11 *v. Witt* (1985) 469 U.S. 412, 428), this Court must assess juror 7’s state of mind when she
12 provided answers to the jury questionnaire. (See *Smith v. Phillips* (1982) 455 U.S. 209,
13 215 [“[T]he remedy for allegations of juror partiality is a hearing in which the defendant
14 has the opportunity to prove actual bias.”].)

15 These are just some of the material factual issues which respondent’s Return has
16 placed in dispute. Respondent’s suggestion that no hearing is required to resolve these
17 disputes must be rejected.

18 **B. Evidentiary Issues in Connection With the Jury Misconduct Claim**

19 As discussed above because there are numerous material disputed facts, an
20 evidentiary hearing is required. Accordingly, full briefing on the legal and factual issues
21 in this case is certainly premature.

22 But among numerous arguments presented in respondent’s Return in connection
23 with the jury misconduct claim, there are several that merit a response here because they
24 may impact the scope of the evidentiary hearing. Mr. Peterson will address each of them
25 briefly.

26 **1. Juror 7’s Post-Trial Conduct Is Relevant to Pre-Trial Prejudice**

27 In his Petition Mr. Peterson noted a number of actions juror 7 took after jury
28 selection – some during deliberations and some after the verdict – which are

1 circumstantial evidence of her state of mind. Without citation to any legal authority,
2 respondent urges this Court to blind itself to juror 7's conduct, arguing that actions after
3 jury selection are "irrelevant to the questions before this court" and "irrelevant as to
4 whether [she] was biased before trial." (Return at pp. 29, 32.) To the contrary, juror 7's
5 post jury-selection actions provide context and support for her pre-trial bias.

6 In *Dyer v. Calderon* (9th Cir. 1998) 151 F.3d 970, the Ninth Circuit recognized
7 that post-trial actions by a juror may be relevant to the question of a juror's bias. In that
8 capital case, a juror lied to the trial court about her brother's murder. (*Dyer, supra*, 151
9 F.3d at p. 975.) After trial, the juror became an officer with the California Department of
10 Corrections and served as a guard on death row at San Quentin where Dyer was housed.
11 Later, she became a parole officer and twice photocopied Dyer's central file to check on
12 the status of his appeal. (*Dyer, supra*, 151 F.3d at p. 982 fn. 18.) Contrary to the position
13 respondent urges here, the court did not simply disregard these post-trial facts; instead,
14 the court noted that "[w]hile it is hard to know what to make of these facts – they are too
15 few in number to prove that [the juror] was on a vendetta or had a particular interest in
16 seeing Alfred Dyer executed – they certainly are not consistent with the picture of a
17 model indifferent juror." (*Ibid.*)

18 More similar to the instant case is *United States v. Parse* (2d Cir. 2015) 789 F.3d
19 83, where the Second Circuit considered a juror's post-trial letter in determining that the
20 juror harbored pre-trial prejudice against the defendant. Parse and his co-defendants
21 were convicted of several federal crimes. (*Parse, supra*, 789 F.3d at p. 86.) The day
22 after the verdict, one of the jurors wrote a letter to the Assistant U.S. Attorney who led
23 the prosecution. (*Id.* at p. 90.) The letter stated in relevant part, "I thought that you . . .
24 did an outstanding job on behalf of Our Government Kudos to you and your
25 team!" The letter also described how the juror had held out on her own for two days in
26 favor of convicting on a conspiracy charge. Subsequent defense investigation of the juror
27 and additional testimony at a post-trial evidentiary hearing revealed that she had lied in
28

1 order to gain a place on the jury. (*Id.* at 91-93.) The district court found that the letter,
2 combined with her lies, demonstrated actual bias, but refused to overturn Parse's
3 conviction because it found that he waived the claim. (*Id.* at pp. 93, 101.) The Second
4 Circuit agreed with the finding of actual bias, concurring with the district court that the
5 juror's bias "bled through" her "remarkable" post-trial letter. (*Id.* at p. 120 (internal
6 quotation marks omitted).)

7 *Parse* and *Dyer* are instructive; nothing in law, logic, or common sense supports
8 respondent's position that courts should simply ignore a juror's post-jury selection
9 behavior when assessing whether misconduct has occurred. After all, biased jurors do
10 not suddenly lose their bias once they hear evidence, begin deliberations or once the trial
11 ends. That a juror may successfully conceal evidence of misconduct until after a verdict
12 should not result in a windfall to respondent, and insulate the case from a claim of
13 misconduct.

14 **2. Juror 7's Statements During Deliberations Are Not Barred Under** 15 **Evidence Code Section 1150, Subdivision (a)**

16 Respondent argues that juror 7's statements during deliberations discussing
17 whether Laci Peterson's unborn child was a fetus or a living child are inadmissible under
18 Evidence Code section 1150, subdivision (a) "to show the effect of statements or events
19 on the mental processes of a juror when inquiring into the validity of a verdict."¹⁴ (Return
20 at p. 31.) The legal relevance of this observation is difficult to discern. Juror 7's
21 statements have not been offered "to show the effect of statements or events on the
22

23 ¹⁴ Evidence Code section 1150, subdivision (a) states that:

24 (a) Upon an inquiry as to the validity of a verdict, any otherwise admissible
25 evidence may be received as to statements made, or conduct, conditions, or
26 events occurring, either within or without the jury room, of such a character
27 as is likely to have influenced the verdict improperly. No evidence is
28 admissible to show the effect of such statement, conduct, condition, or
event upon a juror either in influencing him to assent to or dissent from the
verdict or concerning the mental processes by which it was determined.

1 mental processes of [juror 7]” As the California Supreme Court has recognized,
2 section 1150, subdivision (a), “expressly permits, in the context of an inquiry into the
3 validity of the verdict, the introduction of evidence of ‘statements made . . . within . . . the
4 jury room.’” (*People v. Cleveland* (2001) 25 Cal.4th 466, 484.) In other words, when a
5 juror’s statements are themselves evidence of misconduct, those statements are
6 admissible. (*Ibid.*) That is precisely the case here.

7 Along those lines, California courts have recognized that accepting respondent’s
8 contrary interpretation of section 1150, subdivision (a) – that juror statements during
9 deliberations demonstrating pre-existing bias must be excluded as bearing on a juror’s
10 mental process – would make it nearly impossible for a party to prove juror bias.
11 Therefore, “the rule against proof of juror mental processes is subject to the well-
12 established exception for claims that a juror’s preexisting bias was concealed on voir
13 dire.” (*Manriquez, supra*, 5 Cal.5th at p. 800 [quoting *In re Hamilton* (1999) 20 Cal.4th
14 273, 298-299 fn. 19].)¹⁵

15 Here, Mr. Peterson alleges that juror 7’s statements during deliberations,
16 combined with her false answers on her questionnaire, are evidence of her pre-trial bias
17 against Mr. Peterson that she concealed during jury selection and voir dire. Because the
18 statements in paragraph 24 of the Petition relate to juror 7’s concealment of bias on voir
19 dire, they are not barred by Evidence Code section 1150, subdivision (a).

20
21 ¹⁵ In addition, respondent raises several Evidence Code section 1150, subdivision (a)
22 objections to juror affidavits attesting to juror 7’s statements during deliberations.
23 (Return at pp. 70-79.) There is a certain irony to respondent’s position. In Exhibit 1 of
24 its Return respondent attached a declaration from juror 7. In paragraphs 32 and 33 juror
25 7 talks about what “crossed [her] mind” during trial, what thoughts “played a[] role in my
26 evaluation of the evidence” and when she began to reach conclusions.

27 The court need not linger over the inconsistency. While this is not the time to
28 litigate the propriety of respondent’s objections, suffice it to say that California law
entitles petitioners to use juror affidavits to prove that jurors have concealed bias or
prejudice on voir dire. (*People v. Hord* (1993) 15 Cal.App.4th 711, 724.) This rule also
provides further support for the common-sense conclusion that post-voir dire conduct and
statements may reveal pre-voir dire bias.

1 **IV. CONCLUSION**

2 In November 2000, when juror 7 was 4 and ½ months pregnant, she swore under
3 oath that “acts of violence” were committed against her which caused her to “fear for her
4 unborn child.” She brought a lawsuit and testified so she could obtain a restraining order.
5 In November 2001, when juror 7 was pregnant with a different child, acts of domestic
6 violence – including battery and cruelty to a child – were committed against both her and
7 her young child by her boyfriend who later pled no contest to criminal charges.

8 Yet when called for jury duty in the Peterson case – a case involving allegations
9 that Mr. Peterson harmed his wife and unborn child – juror 7 denied ever having been the
10 victim of a crime, she denied ever witnessing a crime, she denied ever testifying and she
11 denied ever participating in a lawsuit. Every one of these answers was false, yet Juror 7
12 was seated. Mr. Peterson was entitled to a jury of 12 unbiased jurors. He did not get it.

13
14 Dated: June 25, 2021

Respectfully submitted,

15
16 /S/

17 _____
Cliff Gardner

18 and

19 HABEAS CORPUS RESOURCE CENTER

20 By: /S/

21 _____
Shelley J. Sandusky

22
23 By: /S/

24 _____
Andras Farkas

25 Attorneys for Petitioner

26 Scott Lee Peterson
27
28

1 **VERIFICATION**

2 Cliff Gardner declares as follows:

3 I am an attorney admitted to practice in the State of California. I represent
4 petitioner Scott Lee Peterson herein, who is confined and restrained of his liberty at San
5 Quentin State Prison.

6 I am authorized to file this Denial to Return to Order to Show Cause on Mr.
7 Peterson's behalf. I make this verification because Mr. Peterson is incarcerated in a
8 county different from that of my law office. In addition, many of the facts alleged are
9 within my knowledge as much or more than Mr. Peterson's.

10 I have read the Denial to Return to Order to Show Cause and know its contents to
11 be true.

12 Executed under penalty of perjury on June 25, 2021, at Berkeley, California.

13
14
15 /S/

16 _____
Cliff Gardner

17 Attorney for Petitioner

18 Scott Lee Peterson
19
20
21
22
23
24
25
26
27
28

In re Scott Lee Peterson
Index of Exhibits in Support of
Denial to Return to Order to Show Cause
Volume I

VOLUME 1

<u>Exhibit</u>	<u>Description</u>
1.	Birth Certificate of Juror 7's Child
2.	Income and Expense Declaration of Juror 7, County of San Mateo vs. William Cullen Robinson, Case No. 72904, Signed March 25, 2004 (Filed May 10, 2004)

Exhibit 1

Birth Certificate of Juror 7's Child

COUNTY of SANTA CLARA

SAN JOSE, CALIFORNIA

INFORMATIONAL USE ONLY

NOT A VALID DOCUMENT TO ESTABLISH IDENTITY

CERTIFICATE OF LIVE BIRTH

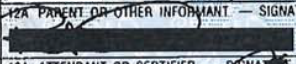


STATE OF CALIFORNIA

1200243015369

LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER

STATE FILE NUMBER

USE BLACK INK ONLY

THIS CHILD	1A NAME OF CHILD — FIRST (GIVEN) Juror 7's child's name redacted		1B MIDDLE	1C LAST (FAMILY)	
	2 SEX Male	3A THIS BIRTH SINGLE TWIN ETC Single	3B IF MULTIPLE, THIS CHILD 1ST, 2ND ETC	4A DATE OF BIRTH — MM/DD/CCYY 06/27/2002	4B HOUR — (24 HOUR CLOCK TIME) 0754
PLACE OF BIRTH	5A PLACE OF BIRTH — NAME OF HOSPITAL OR FACILITY Lucile Packard Children's Hospital			5B STREET ADDRESS — STREET NUMBER OR LOCATION 725 Welch Road	
	5C CITY Palo Alto			5D COUNTY Santa Clara	5E PLANNED PLACE OF BIRTH Hospital
FATHER OF CHILD	6A NAME OF FATHER — FIRST (GIVEN)	6B MIDDLE	6C LAST (FAMILY)		7 STATE OF BIRTH
MOTHER OF CHILD	9A NAME OF MOTHER — FIRST (GIVEN) Juror 7's name redacted	9B MIDDLE	9C LAST (MAIDEN)		10 STATE OF BIRTH CA
INFORMANT CERTIFICATION	12A PARENT OR OTHER INFORMANT — SIGNATURE 			12B RELATIONSHIP TO CHILD Mother	12C DATE SIGNED 07/01/2002
	13A ATTENDANT OR CERTIFIER — SIGNATURE — DEGREE OR TITLE 			13B LICENSE NUMBER G076084	13C DATE SIGNED 07/01/2002
CERTIFICATION OF BIRTH	13D TYPED NAME, TITLE AND MAILING ADDRESS OF ATTENDANT Christie Coleman, M.D., 795 El Camino Real, Palo Alto, CA 94301			14 TYPED NAME AND TITLE OF CERTIFIER IF OTHER THAN ATTENDANT C. Aldana, Birth Clerk	
	15A DATE OF DEATH	15B STATE FILE NO. (STATE USE ONLY)	16 LOCAL REGISTRAR — SIGNATURE 		17 DATE ACCEPTED FOR REGISTRATION 07/10/2002



* R 2 3 7 5 9 0 3 *

DATE ISSUED — JUN 22 2021

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the County Clerk.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

CERTIFIED COPY OF VITAL RECORDS

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

This is a true and exact reproduction of the document officially registered and placed on file in the Office of the Santa Clara County Clerk-Recorder.

Regina Alcomendras
REGINA ALCOMENDRAS,
COUNTY CLERK-RECORDER



Exhibit 2

Income and Expense Declaration of Juror 7, *County of San Mateo vs. William Cullen Robinson*, Case No. 72904, Signed March 25, 2004 (Filed May 10, 2004)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TRINIDAD MADRIGAL CSB #97700 LEAD CHILD SUPPORT ATTORNEY SAN MATEO COUNTY DCSS 555 COUNTY CENTER 2ND FLOOR <div style="text-align: right;">REDWOOD CITY, CA 94063-1665</div>	TELEPHONE NO.: (650) 366-8221 <div style="text-align: center;">FOR COURT USE ONLY</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-weight: bold;">SAN MATEO COUNTY</div> <div style="text-align: center;">MAY 10 2004</div> <div style="text-align: center;">Clerk of the Superior Court</div> <div style="text-align: center;">By DEPUTY CLERK</div>
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 COUNTY CENTER MAILING ADDRESS: 400 COUNTY CENTER CITY AND ZIP CODE: REDWOOD CITY, CA 94063-1655 BRANCH NAME: SUPERIOR COURT COUNTY OF SAN MATEO	CASE NUMBER: 72904
PETITIONER/PLAINTIFF: THE COUNTY OF SAN MATEO RESPONDENT/DEFENDANT: WILLIAM CULLEN ROBINSON OTHER PARENT/CLAIMANT: Juror 7's name redacted	
INCOME AND EXPENSE DECLARATION	

1. Employment

Fill out the information below on your current job, or if you're unemployed, your most recent job.

- Attach 1 copy of pay stubs for last 2 months here (cross out social security numbers)
- a. Employer name: Stanford Federal Credit Union
- b. Employer's address:
- c. Employer's phone number:
- d. Your Occupation: Bank Teller
- e. Date job started: 4/28/03
- f. If unemployed, date job ended:
- g. I work about 40 hours per week.
- h. I get paid \$ 14.21 gross (before taxes) ☐ per month ☐ per week ☒ per hour

If unemployed now, list what you got paid on your last job.

If you have more than one job, attach an 8 1/2 by 11 sheet of paper and list the same information as above for your other job(s). Write "Item 1- Other Job" at the top.

2. Age and Education

- a. My age is (specify): 33
- b. I have completed high school or equivalent ☒ yes ☐ no If no, highest grade completed _____
- c. Number of years of college completed (specify): ☐ degree obtained (specify): _____
- d. Number of years of graduate school completed (specify): ☐ degree(s) obtained (specify): _____
- e. I have the following ☐ professional/occupational licenses (specify): _____
- ☒ vocational training (specify): _____

3. Tax information

- a. I last filed taxes in 03/04 (year).
- b. My tax filing status is:
☒ single ☐ head of household ☐ married filing separately.
☐ married filing jointly with (specify name): _____
- c. ☐ I file state tax returns in ☐ California ☐ Other (specify): _____
- d. I claim the following number of exemptions (including myself) on my taxes (specify): 3

4. Other party's income

I estimate the gross monthly income (before taxes) of the other party in this case is: \$?
 This estimate is based on (explain): _____

If you need more space to answer any questions on this form, attach an 8 1/2-by-11 sheet of paper, and write the question number before your answer. Number of pages attached _____.

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Juror 7's name redacted

Date: 3/26/04

 (SIGNATURE OF DECLARANT)

(TYPE OR PRINT NAME)

PETITIONER/PLAINTIFF: THE COUNTY OF SAN MATEO RESPONDENT/DEFENDANT: WILLIAM CULLEN ROBINSON OTHER PARENT/CLAIMANT: Juror 7's name redacted	CASE NUMBER: 72904
---	------------------------------

Attach copies of your pay stubs for the last two months and proof of any other income. Take a copy of your latest federal tax return to the court hearing. (Cross out your social security number on the pay stub or tax return.)

5. Income (list all sources that you have received for the last 12 months--for average monthly, divide by 12)

Average
monthly (total
last 12 months
divide by 12)

	Last month	
a. Salary or wages (gross, before taxes)	\$ 0	
b. Overtime (gross, before taxes)	\$ 0	
c. Commissions or bonuses	\$ 0	
d. Public assistance (for example, TANF, SSI, GA/GR) <input type="checkbox"/> currently receiving	\$ 0	
e. Spousal support <input type="checkbox"/> from this marriage <input checked="" type="checkbox"/> from a different marriage	\$ 400.00	
f. Pension/retirement fund payments	\$ 0	
g. Social security retirement (not SSI)	\$ 0	
h. Disability <input type="checkbox"/> social security (not SSI) <input type="checkbox"/> state disability (SDI) <input type="checkbox"/> private	\$ 0	
i. Unemployment compensation	\$ 0	
j. Workers' compensation	\$ 0	
k. Other (military basic allowance for quarters (BAQ), royalty payments, etc.) (specify):	\$ 0	

6. Investment Income

a. Dividends/interest	\$ 0	
b. Rental property income	\$ 0	
c. Trust Income	\$ 0	
d. Other (specify):	\$ 0	

Attach a schedule showing gross receipts less cash expenses for each piece of property.

7. My Income from Self-Employment after business expenses for each business:

I am the ☐ owner/sole proprietor ☐ partner ☐ other (specify):

Number of years in this business (specify):

Name of business (specify):

Type of business (specify):

Attach a profit and loss statement for the last two years or a schedule C from your last federal tax return. If more than one business, provide the same information as above for all your businesses.

8. Additional Income

☐ I received one-time money (lottery winnings, inheritance, etc.) in the last 12 months (specify source and amount):

9. Change in Income

☐ My financial situation has changed significantly over the last 12 months because (specify):

10. Deductions

Last month

a. Required union dues	\$ 0
b. Required retirement payments (not social security, FICA, 401k or IRA)	\$ 0
c. Medical, hospital, dental, and other health insurance premiums (total monthly amount)	\$ 0
d. Child support I pay for my other children from another relationship	\$ 0
e. Spousal support I pay by court order from a different marriage	\$ 0
f. Necessary job-related expenses not reimbursed by my employer (attach explanation labeled Question 10f)	\$ 0

11. Assets

Total

a. Cash and <u>checking</u> accounts <u>savings</u> , credit union, money market, and other deposit accounts	\$ 160.00
b. Stocks, bonds, and other assets you can easily sell	\$ 0
c. All other property, <input type="checkbox"/> real or <input type="checkbox"/> personal (estimate fair market value minus the loans and debts you owe)	\$ 0

PETITIONER/PLAINTIFF: THE COUNTY OF SAN MATEO RESPONDENT/DEFENDANT: WILLIAM CULLEN ROBINSON OTHER PARENT/CLAIMANT: Juror 7's name redacted	CASE NUMBER: 72904
--	------------------------------

12. The following people live with me:

Name	Age	How is the person related to you?	Gross monthly income	Pays some of the household expenses?
a. Juror 7's children's names redacted	15	Son		<input type="checkbox"/> YES <input type="checkbox"/> NO
b. Juror 7's children's names redacted	12	↓		<input type="checkbox"/> YES <input type="checkbox"/> NO
c. Juror 7's children's names redacted	3			<input type="checkbox"/> YES <input type="checkbox"/> NO
d. Juror 7's children's names redacted	1			<input type="checkbox"/> YES <input type="checkbox"/> NO
e. Juror 7's children's names redacted				<input type="checkbox"/> YES <input type="checkbox"/> NO

13. Average monthly expenses



☒ Estimated expenses

☐ Actual expenses

☐ Proposed needs

a. My home:

(1) ☒ Rent or ☐ mortgage \$ 1000

(2) If mortgage include:

Average Principal \$ _____

Average Interest \$ _____

(3) Real property taxes \$ —

(4) Homeowner's or renter's insurance (if not included above) \$ ✓

(5) Maintenance and repair \$ —

b. Health-care costs not paid by insurance \$ 450.00

c. Child care \$ ✓

d. Groceries and household supplies \$ 550.00

e. Eating out \$ 100.00

f. Utilities (gas, electric, water, trash) \$ 60.00

g. Telephone/cell phone/e-mail \$ 170.00

h. Laundry and cleaning \$ 40.00

i. Clothes \$ 300.00

j. Education (specify): \$ —

k. Entertainment, gifts and vacation \$ 500.00

l. Auto expenses and transportation (insurance, gas, repairs, bus, etc.) \$ 600.00

m. Insurance (life, accident, etc.; do not include auto, home, or health insurance.) \$ 0

n. Savings and investments \$ 50.00

o. Charitable contributions \$ 0

p. Monthly payments listed in item 16 (itemize below in 16 and insert total here) \$ _____

q. Other (specify): \$ _____

r. TOTAL EXPENSES (a-q) \$ _____
(do not include amounts in a(2))

s. Amount of expenses paid by others \$ _____

14. Installment payments and debts (not listed above)

Paid to:	For:	Amount	Balance	Date of last payment
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

15. Attorney fees (This is required if either party is requesting attorney fees.)

a. To date I have paid my attorney for fees and costs: \$

b. The source of this money was (specify):

c. I owe to date the following fees and costs over the amount paid: \$

d. My attorney's hourly rate is \$

I confirm this information and fee arrangement.

Juror 7's name redacted

(TYPE OR PRINT NAME OF ATTORNEY)

Date:

3/26/04

(SIGNATURE OF ATTORNEY)

PETITIONER/PLAINTIFF: THE COUNTY OF SAN MATEO RESPONDENT/DEFENDANT: WILLIAM CULLEN ROBINSON OTHER PARENT/CLAIMANT: Juror 7's name redacted	CASE NUMBER: 72904
--	-----------------------

Child Support Information
 Fill out this page only if your case involves child support.

16. Number of children

- a. I have 1 children under the age of 18 with the other parent.
 b. The children spend 100 % of time with me 0 % of time with the other parent.
If not sure about percentage, or it's not been agreed upon, please describe your parenting schedule here.

17. Children's health care expenses

- a. ☒ I do ☐ I do not have health insurance for the children available at work.
 b. Name of insurance company:
 c. Address of insurance company:

d. The monthly cost for children's health insurance is or would be: \$ _____
Do not include the amount your employer pays.

18. Additional expenses for the children in this case: Amount per month

- a. Child care so I can work or get job training..... \$ 0
 b. Children's health care not covered by insurance..... \$ 0
 c. Travel expenses for visitation..... \$ _____
 d. Children's educational or other special needs (specify)..... \$ _____

19. Special hardships:

I ask the court to consider these special financial circumstances:
 (Attach documentation of any item listed here including court orders.).

Amount per month For how many months?

- a. Extraordinary health expenses not included in 18b..... \$ _____
 b. Major losses not covered by insurance (examples: fire, theft, other uninsured loss)..... \$ _____
 c. (1) Expenses for my minor children from other relationships who live with me \$ 300.00
 (List names and ages of those children):

Juror 7's children's names redacted

(2) Child support I receive for those children One child \$ 400.00 a month

These expenses listed in a, b and c create an extreme financial hardship because (explain):

20. Other information I want the court to know concerning support in my case.

Earning Statement



STANFORD FEDERAL CREDIT UNION
PAYROLL ACCOUNT

Period Ending: 03/15/2004
Pay Date: 03/15/2004

Juror 7's name redacted

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
State: 1



Social Sec. [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	14.2100	78.67	1,117.90	
Vacation	14.2100	8.00	113.68	
Pto				112.00
Gross Pay			\$1,231.58	5,842.88

Other Benefits and Information	this period	total to date
G.T.L.	3.11	15.47
Pto Hrs Tkn		8.00
Sick Hrs Tkn		13.00
Vac Hrs Tkn		16.00
Sick		1.71
Vacation		22.71

Deductions	Statutory		
	Federal Income Tax	-132.47	615.11
	Social Security Tax	-75.87	359.82
	Medicare Tax	-17.74	84.15
	CA State Income Tax	-29.30	127.59
	CA SUI/SDI Tax	-14.40	68.30
	Other		
	Aflac Posttax	-8.25	
	Aflac Pre	-10.95*	54.75
Net Pay		\$942.60	

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$1,220.63

CO. FILE DEPT. CLOCK NUMBER 075
VIS 002901 810 0000000463 1

STANFORD FEDERAL CREDIT UNION
PAYROLL ACCOUNT

Earnings Statement



Period Ending: 03/15/2004
Pay Date: 03/15/2004

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
State: 1

Juror 7's name redacted



Earnings	rate	hours	this period	year to date
Regular	14.2100	78.67	1,117.90	
Vacation	14.2100	8.00	113.68	
Pto				112.00
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	Social Security Tax	-75.87	359.82
	Medicare Tax	-17.74	84.15
	CA State Income Tax	-29.30	127.59
	CA SUI/SDI Tax	-14.40	68.30
	Other		
	Aflac Posttax	-8.25	
	Aflac Pre	-10.95*	54.75
	Net Pay	\$942.60	

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$1,220.63

Other Benefits and Information	this period	total to date
G.T.L.	3.11	15.47
Pto Hrs Tkn		8.00
Sick Hrs Tkn		13.00
Vac Hrs Tkn		16.00
Sick		1.71
Vacation		22.71

LCSA #541971
Robinson

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TEAR HERE

SLP400511

[REDACTED]

[REDACTED]

PERSONNEL		HOURS		EARNINGS		GROSS	STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS		NET PAY
Reg		O/T	Hours 3&4	Reg	O/T	Earnings 3&4	Earnings 5	Federal	State/Local		
Juror 7's name redacted		70.87	8.00 S	1,004.22		113.68 S					3.11 N- L G.T.L.
File:	002901					18.10 R					
Dept:	810										
Rate:	14.2100						1,136.00	118.14 FIT	23.56 CA	10.95 H AFLAC	8.25 J AFLAC
								69.95 SS	13.27 CA		
								16.36 MED	SUI/DI		
											Check#
											0000000445
											875.52



Payroll Register

STANFORD CRDT UNION

Company Code: VIS

Batch: 4290-075 Period Ending: 01/31/2004 Week 05

Pay Date: 01/30/2004 Page 18

Juror 7's name redacted	73.17	5.00 S	1,024.38	70.00 S									3.03 N- L G.T.L.	
F 002901		8.00 T		112.00 T										
Dept: 810							1,208.38	128.69 FIT	27.79 CA	10.95 H AFLAC	8.25 J AFLAC			Check#
Rate: 14.0000								74.30 SS	14.11 CA					0000000440 <input type="checkbox"/>
								17.38 MED	SUI/DI					924.91



Payroll Register

STANFORD CRDT UNION

Company Code: VIS

Batch: 2260-075 Period Ending: 01/15/2004 Week 03

Pay Date: 01/15/2004 Page 20

PERSONNEL		HOURS		EARNINGS		GROSS		STATUTORY DEDUCTIONS		VOLUNTARY DEDUCTIONS		NET PAY
Reg		O/T	Hours 3&4	Reg	O/T	Earnings 3&4	Earnings 5	Federal	State/Local			<input checked="" type="checkbox"/>
Juror 7's name redacted												
FILE:	2901 (continued)											
Dept:	810	70.67	8.00 S	989.38		112.00 S						
Rate:	14.0000		8.00 T			112.00 T					3.05 N- L G.T.L.	
								1,213.38	129.74 FIT	29.16 CA	10.95 H AFLAC	8.25 J AFLAC
									73.61 SS	10.82 CA		
									17.22 MED	SUI/DI		
												Check#
												0000000434 <input type="checkbox"/>
												Pay 2
												933.63



Payroll Register

STANFORD CRDT UNION

Company Code: VIS

Batch: 8646-075 Period Ending: 12/31/2003 Week 52

Pay Date: 12/31/2003 Page 21

PROOF OF SERVICE

Case Name: *In re Scott Lee Peterson*

Case No.: SC055500A

1. I am over 18 years of age and not a party to this action. I am a resident of or employed in San Francisco, California, the county from which the document was served.

2. My electronic service address is: docketing@hrcr.ca.gov. My business address is: Habeas Corpus Resource Center, 303 Second Street, Suite 400 South, San Francisco, California 94107.

3. Pursuant to the agreement of the parties, I electronically served on this date the following document on Respondent's counsel at the electronic service address as specified in paragraph 4:

Denial to Return to Order to Show Cause; Exhibits in Support Thereof.

4. The document was served on:

Birgit Fladager
District Attorney
Birgit.Fladager@standa.org
832 12th Street, Suite 300
Modesto, CA 95354
Counsel for Respondent

Dave Harris
Assistant District Attorney
Dave.Harris@standa.org
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 25, 2021

Perpetua Hilton